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identified only one State, Florida, with a judicial education program directed specifically at traffic courts. It is the Safety Board's view that the States and judicial and professional organizations within the States should give greater attention to the provision of alcohol-related and DWI adjudication training for judges, including the handling of the more difficult repeat offender cases, since in many courts DWI cases make up a large and growing portion of the docket.

In addition to the programs in individual States, there are training resources available to judges on a national basis. The National Judicial College offers an intensive week long seminar on alcohol and drugs which addresses the handling of substance abusers in the judicial system, from initial identification through referral, monitoring, and followup. However, this workshop has been attended by only 600 judges to date.

The American Academy of Judicial Education (Academy), in conjunction with the NHTSA, has developed a model traffic law adjudication curriculum for use by judges and judicial educators. The curriculum includes training in alcohol pharmacology; DWI trials and sentencing; habitual, suspended, and revoked offenders; traffic case information and proof requirements; and other legal and technical issues related to traffic law adjudication. According to the NHTSA and the Academy, 2,050 judges in about 45 jurisdictions had received training in this curriculum between 1980 and 1983.

In order to reach a larger number of judges, the NHTSA is developing a self-taught home study course on DWI adjudication for both judges and prosecutors. It is hoped that this will enable judges who are now bound by time and resource constraint to receive some training. In addition, it hopes to prepare a bench book which can serve as a reference tool for judges during the course of a DWI trial. These measures also will help to address the problems caused by the high rate of turnover among judges who hear traffic cases. Constraints imposed by the set schedule of outside training courses are avoided by the home study approach, and jurisdictions will be able to avoid expending major resources on judges who might be on the bench for only a short time before moving on to other types of cases.

The NHTSA also has provided two forms of support to address the resource problems which States face in providing DWI-related training to judges. The first involves a technical assistance grant to the Academy which enables it to organize and administer training programs in the States and to tailor the traffic law adjudication curriculum to a particular State's laws and procedures. The second involves providing Federal highway safety funds to finance judicial education programs at the State level and to pay for training such as that offered by the National Judicial College. However, while helpful, this support will not totally alleviate the problems faced by the States in assuring adequate training for their judges.

One Colorado judge interviewed by Safety Board investigators said, "It serves very little purpose to have effective police agencies, training programs for law enforcement personnel, effective probation, and post-adjudicatory processes if judicial officers do not understand or are unable to effectively deal with either pre-trial or post-trial matters, due to lack of judicial education." The Safety Board agrees. Judges hold key powers in the complex network of persons and systems who interact with drunk drivers. Their willingness and ability to play a strongly constructive role in that network is crucial to the entire system's degree of success in reducing the number of drunk drivers who appear before them over and over again. The Safety Board believes a greater commitment of State resources to making judicial training on DWI matters available to many more judges, and a greater commitment by the judicial organizations to promoting the value of such training to their members, could produce substantial improvement in the system's overall handling of these cases.

Sanctions

Diversion/Supervision Programs

In many States, alcohol education or treatment programs can be substituted for court-ordered punitive sanctions for DWI offenses, typically at the option of the offender. For example, in Kansas, New Mexico, and Oregon, programs used in this way are called "diversion", and are completed by the offender before the trial. In

Illinois, on the other hand, they are called "supervision" (or "court supervision"), and are completed by offenders who plead guilty and ask for supervision.

The use of diversion/supervision programs is not universally regarded as an effective means of reducing alcohol-related offenses. These programs are attractive to the judicial system because they are a means of handling the increasing numbers of alcohol-related traffic offenses outside the already overloaded court system. It is true also that diversion/supervision programs can be one means to promote participation by alcohol offenders in alcohol education or treatment programs, a desirable goal. On the other hand, they are often used to supplant certain punitive sanctions which are known to have at least a temporary effect in reducing subsequent crashes by alcohol offenders. Furthermore, these programs can result in major distortions in individual and collective records on alcohol-related traffic violations and convictions, since all or part of the judicial process may be bypassed. The particular ways in which diversion/supervision programs are structured and administered are thus important in their overall effects on traffic safety.

For example, in Illinois (as in most States with these programs), supervision is supposed to be available only to first-time DWI offenders. Under supervision, Illinois DWI offenders are typically required to complete a "DWI school", perhaps a period of community service, and have no moving violations for at least one year. The following case, however, is an example of an inappropriate use of the Illinois supervision program.

On September 4, 1983, about 12:30 a.m., a Chevrolet sedan was traveling eastbound on I-55 near First Avenue in Chicago, when the driver drove onto the left shoulder and hit and killed a pedestrian standing in front of her disabled car. The Chevrolet driver left the accident scene, exited the expressway, and stopped when his vehicle became disabled. His BAC was tested at 0.17%. As a result of this hit-and-run fatality, the driver was charged with DWI and reckless homicide.

Safety Board investigation of his previous driving record disclosed that, since 1973, he had been arrested for DWI at least three times, twice more for driving with an open liquor container, six times for speeding, and once each for obstructing police, attempting to elude police, and improper passing. The most severe sanction he had received for these offenses was 12 days in jail and one year's probation (sentenced to this twice); his fines ranged from \$15 (for one of the speeding convictions) to \$110 (for one of the DWI convictions). His license had been revoked twice for DWI offenses.

In September 1982, he had been arrested for DWI and speeding; his BAC level was tested at 0.228%. The judge at his trial seven months later knew of the BAC level and knew of at least two of the man's previous DWI arrests and convictions. Nevertheless, when the man requested permission to attend an alcohol treatment program under the Illinois court supervision program, in lieu of a punitive sanction, the judge granted the request. Three months later, while still in the supervision program, he was involved in the Chicago pedestrian killing described above.

At one time, the Illinois supervision program did not require that DWI arrests or convictions appear on the records of those who completed supervision programs. Since January 1, 1984, Illinois law has required that supervision for DWI offenses be recorded on the driver license abstract that is available to all law enforcement and judicial agencies. Although several States recently have amended their laws in this way, in some States it is still true that DWI charges are dismissed when a diversion/supervision program is completed, and no record of the DWI arrest is retained on the driver's DMV record. When this happens, it is easy for an offender to be arrested repeatedly for DWI and treated every time as a first offender.

First-time DWI offenders who apply for the Kansas diversion program are referred to an alcohol rehabilitation program for an evaluation, on the basis of which the offender is granted or denied diversion. If denied, the offender's case continues through the court system. If accepted for a diversion program, the offender signs an agreement with the prosecutor's office, which is transmitted to the Driver License Division. The Division codes the offender's driver record to show that he or she has entered a diversion program. By State law, the offender is thereafter considered as having a DWI conviction; if he or she is again arrested for DWI, he

or she will not be eligible for diversion. If convicted of this subsequent charge, the offender must be sentenced as a repeat offender.

In August 1981, Oregon enacted legislation which included a diversion program option for DWI offenders who have not, within ten years, been arrested for a DWI offense, been in a diversion program, been convicted of a felony resulting from the operation of a motor vehicle, and have no reportable accident associated with the current charge. Such an offender may agree with the court to be evaluated by an alcohol and drug evaluation specialist and to participate in an education and/or treatment program. Successful completion of the program and compliance with other conditions of the diversion agreement result in the charge of DWI being dismissed. However, an entry is made on the driving record and is maintained there for ten years. From the beginning of this new program on November 1, 1981, to June 30, 1982, 5,550 Oregonians chose the diversion option—80 to 90% of the eligible first offenders.²⁹

Under the program, a first offender is evaluated and determined to be either a social or a problem drinker. This is accomplished through a series of standardized tests, examination of the offender's criminal and driving histories, consideration of the BAC level and police report at the time of arrest, and a structured interview with the individual. Those classified as social drinkers are referred to a level I program, which is primarily alcohol education, such as short film/lecture programs. Those classified as having more severe drinking problems are referred to a level II program, which includes therapeutically oriented education (group or individual), residential or outpatient therapy, Antabuse, or various combinations of these. Certainly diversion programs which try to match appropriate levels of treatment to the seriousness of the participant's alcohol abuse are improvements on those in which all participants are automatically sent to an alcohol education school. Research findings by the U.S. Department of Transportation indicate that lecture-oriented "DWI schools" alone do not affect the behavior of problem drinkers and should not be used for these persons.³⁰

Diversion/supervision programs are not the only, nor even the best, way to get alcohol offenders into treatment programs. Although these programs do help to reduce court caseloads, they may produce net reductions in benefits to traffic safety when their structure permits expungement of offense records and precludes the implementation of other laws which depend on the existence of a conviction of DWI. Equally important, if they are structured so as to supplant the imposition of punitive sanctions with known loss reduction effectiveness, they are undesirable. As the Presidential Commission on Drunk Driving noted:

Rehabilitation and education programs ... should be provided as a supplement to other sanctions ... Education and treatment programs are not substitutes for appropriate penalties to be assessed upon those who violate the law. Rather, they should be looked upon as adjuncts to legal and administrative sanctions, intended to address the knowledge, attitude, and behavioral problems that may underlie driving under the influence.³¹

One of the sanctions with known crash reduction effectiveness which is often supplanted by diversion/supervision programs is license suspension/revocation, discussed in the following section.

License Suspension/Revocation

All 50 States and the District of Columbia have statutes that permit driver's license actions (suspension or revocation) to be imposed for first and/or subsequent offenses.³² In 26 States, these actions are mandatory; in

²⁹ Office of Programs for Alcohol and Drug Problems, Profile and Results of Clients Served, Chapter 803 Oregon Laws 1981, prepared for the 62d Oregon Legislative Assembly, November 24, 1982.

³⁰ U.S. DOT, Summary of National Alcohol Safety Action Projects, August, 1979.

³¹ Presidential Commission on Drunk Driving, *op. cit.*, p. 22.

³² The basic differences between "suspension" and "revocation" lie in the different procedures an offender must follow in order to regain his or her full driving privileges. Typically, restoration of a suspended license is accomplished by the automatic return of the license (if it was confiscated) or an administrative action by the DMV to update their records. However, the restoration following revocation is more complex and requires the offender to submit an application, pay a fee, and, in some cases, complete an alcohol evaluation and/or treatment.

24 of these States, license actions are mandatory for first and subsequent offenses; in two, they are mandatory for second and subsequent offenses.³³

There is evidence that persons whose licenses have been suspended or revoked continue to drive. A 1980 California study found that, of drivers with a suspended or revoked license, two-thirds admitted to driving despite the license action.³⁴

Despite the tendency of many drivers to continue driving with suspended or revoked licenses, some highway safety experts consider it to be the most cost-effective countermeasure known at this time for reducing crashes by drunk driving offenders.³⁵ A 1974 study in Oregon found that 50% of the drivers whose licenses had been suspended or revoked stated that during revocation they drove less, and more carefully.³⁶ A 1978 California study found that repeat offenders whose licenses were suspended (12 months) or revoked (36 months), in addition to the usual fines and/or jail terms, subsequently had 30% fewer crashes and convictions (DWI, reckless driving, speeding, hit/run, etc.) than repeat offenders who merely were fined and/or jailed. These results persisted past the expiration of the suspension/revocation period.³⁷ Studies comparing the effectiveness of license suspension with that of treatment programs do not indicate that treatment is superior to the less costly license actions.³⁸ Current thinking is that DWI offenders should receive both treatment and license action.³⁹

The maximum effectiveness of any general deterrence countermeasure is achieved by drivers perceiving an unacceptably high risk of being apprehended and a certainty of being swiftly subjected to a sanction severe enough to be unacceptable to them.⁴⁰ These requirements also are true of attempts to deter motorists from driving with a suspended or revoked license. Although it may be difficult to devise ways to increase a driver's risk of being apprehended for driving with a suspended or revoked license, there are steps that could be taken to increase the swiftness and certainty of severe sanction for this crime, once apprehended. One method being tried is impoundment of the offender's vehicle. A recent Washington law authorizes impoundment and sale at public auction of vehicles whose drivers are caught driving in violation of a license suspension or revocation. Wisconsin recently amended its laws to include a combination of fine, jail term, and an additional six-month license suspension for such offenders and, for offenders who own their own vehicles, the court may order the vehicle's indefinite impoundment.

Ways to increase the effectiveness of license actions as a drunk driving deterrent should be explored further. States now can gain credit toward obtaining supplemental Federal highway safety funds for making impoundment of license plates mandatory if a person whose license has been suspended or revoked for a drunk driving offense is caught driving. Only one State has so far adopted such a provision; it is not yet known whether it is effective in increasing the deterrent benefits of license actions against DWI offenders.

³³ National Highway Traffic Safety Administration, *DWI Sanction: The Law and the Practice* (DOT-HS-806-417), June 1981.

³⁴ R.E. Hagen et al., *Suspension and Revocation Efficacy on the DWI Offender*, California Department of Motor Vehicles, 1980.

³⁵ See Waller, *op. cit.*

³⁶ N. Kaestner and L. Spelght, *Oregon Study of Driver License Suspension*, Oregon Department of Transportation, 1974. Cited in Waller, *op. cit.*

³⁷ R.E. Hagen, "The Efficacy of Licensing Controls as a Countermeasure for Multiple DWI Offenders", *Journal of Safety Research*, Vol. 10, pp. 115-122 (1978). Cited in Waller, *op. cit.* A subsequent study, "The Long-Term Traffic Safety Impact of a Pilot Alcohol Abuse Treatment as an Alternative to License Suspensions", by Daniel C. Sadler and M.W. Perrine (California Department of Motor Vehicles, April 1984), found similar results.

³⁸ R.E. Hagen et al., "The Traffic Safety Impact of Alcohol Abuse Treatment as an Alternative to Mandatory Licensing Controls", *Accident Analysis and Prevention*, Vol. XI, pp. 272-291 (1979); C.L. Popkin, L.K. Li, J.H. Lacey, J.R. Stewart, and P.F. Waller, *An Initial Evaluation of the North Carolina Alcohol and Drug Education Traffic Schools* (Technical Report, Vol. 1), University of North Carolina Highway Safety Research Center (1983); P.M. Salzberg, R. Hauser, and C.L. Klingberg, *License Revocation and Alcoholism Treatment Programs for Habitual Traffic Offenders*, Washington State Department of Licensing (1981). Cited in Waller, *op. cit.*

³⁹ Presidential Commission on Drunk Driving, *op. cit.*

⁴⁰ See Russ, *op. cit.*

Treatment and Rehabilitation

The sanctions discussed so far largely have been punitive in nature. Since the early 1970s, highway safety experts have focused increasing attention on trying to find effective ways to change the behavior of the DWI offender. Incarceration keeps the DWI repeat offender off the street for a time, but if his or her alcohol abuse problem has not been resolved (at least to some extent), that offender is likely to repeat the offense sooner or later, after release. Even license actions, known to be effective in reducing repeat offenders' subsequent accidents for a period of time, are, in the last analysis, a temporary remedy. At some point after license reinstatement, some, perhaps most, problem drinkers are likely to repeat their offense, unless they have had treatment for alcohol dependency.

Perhaps this will be the case even with alcohol treatment. Although court-based referral programs have become quite common and accepted by the treatment community as an appropriate source for identifying persons with alcohol problems, it has been difficult to evaluate the effectiveness of these programs, either in terms of highway safety or overall social benefits. One recent assessment of alcoholism treatment could only conclude:

There is some evidence to support the hypothesis that alcoholism treatment is cost-beneficial. The benefits of alcoholism treatment, even if they fall short of what may be claimed, seemed to be in excess of the costs of providing such treatment.⁴¹

However poorly we understand why people abuse alcohol and what to do to prevent or cure this social ill, there seems to be little alternative at this time to continuing research and evaluation of treatment methods.

⁴¹ Leonard Saxe et al., *The Effectiveness and Costs of Alcoholism Treatment*, Office of Technology Assessment (a research arm of the U.S. Congress) (March 1983), p. 66.

BIBLIOGRAPHIC SECTION

ABSTRACTS

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Drunk Driving Laws & Enforcement: An Assessment of Effectiveness

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Criminal Justice Section*

ABSTRACT

The project's general objective was to assess the effectiveness and appropriateness of commonly used and newly emerging legal approaches to drunk driving. The specific objectives were:

- ◆ To identify existing and proposed sanctions and enforcement techniques that offer potential for reducing the likelihood of alcohol-related traffic accidents, and present significant legal issues in their application, or both;
- ◆ To study and analyze those sanctions and enforcement techniques believed to be of particular interest to legal system personnel, news media, public action groups, the general public, and other individuals and organizations who are involved in anti-drunk driving activities or affected by the problem;
- ◆ To assess, through a series of conferences, meetings, and seminars, the impact of these proposed sanctions and enforcement techniques on highway safety in general and alcohol-related accidents in particular; and
- ◆ To publish this monograph, which documents the project's findings.

Study Approach

The project relied primarily upon the judgment and experience of persons within the justice system in identifying and assessing sanctions and enforcement techniques applied to drunk driving. These capabilities were augmented by the advice of researchers and practitioners representing other disciplines. It should be emphasized that no attempt was made to perform a scientific evaluation of the sanctions and enforcement techniques, although information from the scientific literature was used.

It is interesting to note that very little literature is available on drunk driving that makes an assessment from the perspective of lawyers and judges. However, lawyers (both prosecutors and defense attorneys) and judges deal with drunk drivers every day. They talk with them and get to know them. It is logical to assume that they have some insight into the characteristics that are common to these offenders and have some knowledge as to what will be most effective in deterring their drunk driving conduct. This project sought to elicit some of these viewpoints.

It also sought the views of State legislators. Many changes have been made in drunk driving laws in recent years. It is important to know what legislators believe have been the most effective. After all, scientific evidence that a drunk driving law is effective will be of no use if those persons who enact the laws do not perceive it as effective.

The list of sanctions and enforcement techniques to be addressed in the project was finalized during the second meeting of the Advisory Board. Those selected were:

- ◇ Sobriety checkpoints;
- ◇ Minimum drinking age;
- ◇ "Per se" laws;
- ◇ Server liability for alcohol-related accidents;
- ◇ Admissibility of evidence of alcohol impairment in a civil case;
- ◇ Reduction or elimination of judicial discretion in sentencing first offenders;
- ◇ Restriction or elimination of charge reduction;
- ◇ Improved evidentiary aids and procedures;
- ◇ Required chemical testing of drivers involved in an accident;
- ◇ Administrative summary suspension of the driver's license;
- ◇ Separate offense with enhanced penalties for driving with a revoked, suspended, or restricted license; and
- ◇ Other approaches and programs.

The last item on this list contains several actions for improving the legal system's handling of drunk driving cases through enforcement techniques and sanctions applied to offenders. These include programs for educating the public and legal system personnel on the nature of the problem of drinking and driving and ways of dealing with it, scientific evaluation of programs directed at drunk driving, an interstate system of driver records, specially trained experts for recognizing drug impairment of drivers, and pre-sentence investigations to provide information for sentencing convicted drunk drivers. Also included is legislation prohibiting open containers in motor vehicles, and legislation requiring medical insurance and health maintenance organizations to cover in-patient and out-patient treatment of alcohol and drug dependency.

Two additional meetings were held to assess the sanctions and enforcement techniques selected for the project's focus. The first of these meetings developed a series of assessment criteria and applied them to the sanction and enforcement techniques. They included factors related to the effect of each sanction and enforcement technique on the drunk driving problem, the public, the legal system, and the public's awareness of the significance of the sanction and enforcement techniques on the highway safety process.

Sobriety Checkpoints

Description

Through sobriety checkpoints, vehicles traveling along a designated roadway are stopped by a team of law enforcement officers. A few routine questions are asked by the police and observations are made to find any indication of alcohol impairment. Further investigation is initiated if it is believed that the driver is impaired.

The use of sobriety checkpoints has been fairly widespread outside the United States, including several European countries, Australia and Canada. Recently, it has been used in a number of locations in the United States.

The way a checkpoint operation is implemented varies among the States, counties and cities using them. Sometimes, they are conducted periodically (for example, every month), often during the nighttime hours. On a given night, checkpoints may be set up serially or simultaneously at several locations in the jurisdiction. The specific locations of the checkpoints are usually not announced to the public prior to operation. However, the fact that checkpoints are being set up is usually (but not always) publicized.

The checkpoint team may involve a fairly large number of law enforcement officers (15 or more) and their vehicles. Typically, officers direct groups of several vehicles into an observation area (such as a side street or parking lot) and briefly engage the drivers in conversation by asking routine questions. During the conversation, observations of the driver are made for signs indicating alcohol impairment. Vehicles are selected from the traffic stream so that each vehicle has an equal chance of being stopped. For example, one way of accomplishing this is to stop every fifth or tenth vehicle. If indicated, behavioral tests or preliminary breath tests may be administered, and further action taken (including an arrest for drunk driving). The process is continued until traffic subsides, and the team moves on or ceases operation.

Assessment and Commentary

Effect on Alcohol-Related Accidents. Research in other countries suggests well designed and executed sobriety checkpoint programs initially have a general deterrent effect. Public information and educational aspects are invariably a part of these "successful" programs. Unfortunately, these effects appear to be short lived in many instances. This limited duration of deterrence is a characteristic of many drunk driving programs that have been evaluated.

Effect on the Public. Public response to sobriety checkpoints has been mixed. In most instances, they seem to have been accepted, but several applications have resulted in a strong negative response. Surveys in Oakland County, Michigan (Wolfe and O'Day 1984) found that about 50% of the respondents were in favor of checkpoints. By contrast, the establishment of a roadblock in 1983 on an interstate highway in Arkansas during a time of high traffic volume resulted in a public outcry and subsequent abandonment of these programs by the Arkansas Highway Patrol. In a number of States, opponents of sobriety checkpoints have filed suit to stop them.

Effect on the Legal System. Checkpoints have usually been operated under general constitutional and legislative provisions authorizing the use of police power. However, some States have legislation specifically authorizing checkpoints to verify drivers' licenses and vehicle registrations (for example, S.D. Codified Laws Ann., §32-33-12 (1984) and Wyo. Stat. §7-17-701 et seq. (1977)). At least one State, North Carolina, has enacted legislation (N.C. Gen. Stat §20-16.3A (1983)) dealing with sobriety checkpoints. The North Carolina statute authorizes "impaired driving checkpoints" that are systematically planned in advance, that set out in advance the scheme for stopping drivers, and that mark the checkpoint site to warn the public.

Checkpoints place the greatest operational burden on law enforcement agencies. Checkpoints are labor intensive and impose heavy peak demands for police resources. It is argued by some police officials that allocation of scarce police resources to checkpoints reduces the ability of the police to enforce other laws. Other police officials and analysts assert that the publicity and increased tempo of activity surrounding checkpoint operations actually enhance the enforcement of other laws.

Most police administrators agree that checkpoints are a highly inefficient tactic for catching drunk drivers, and some agencies have abandoned their checkpoint programs because they were perceived as unproductive. This perception seems accurate. For example, a large scale checkpoint effort in New York City resulted in more than 184,000 stops, but only 222 arrests for alcohol or drug-related crimes, including drunk driving. Over 100 police officers were engaged in this effort over a one month period.

Proponents argue that checkpoints are not intended primarily to be a means of apprehending drunk drivers. They support the checkpoints because they perceive them to have a deterrent effect. However, the "general deterrent effect" (i.e. effect upon the total driving population) of checkpoints is not a persuasive argument to many of the individuals who believe that there are less costly and more effective techniques for achieving the same effect. At this time, research provides little objective information for settling these arguments.

Checkpoints are subject to significant legal constraints. They result in stops and brief detentions of drivers by police officers. When a driver is stopped and detained at a checkpoint, the officer usually has no probable cause, or reasonable suspicion, that the driver was under the influence. Therefore, checkpoints must comply with limitations imposed by the Fourth Amendment to the U.S. Constitution.

Effects on Raising Public Awareness. Checkpoints are inherently newsworthy. They are easy to explain and understand. They have also been well covered by the news media wherever they have been used. When they generated controversy, they received even greater coverage. This possibly increased their deterrent effect, but decreased the resolve of enforcement agencies to continue their use.

"Per Se" Laws

Description

"Per se" laws provide that it is an offense to drive with a blood alcohol concentration (BAC) greater than a specified value (usually .10% weight per-unit-volume). These laws should not be confused with the so-called "presumptive" standards, which are also based on blood alcohol concentration.

Under the "per se" laws, a defendant will be convicted on the basis of chemical test evidence alone, since the offense is committed if a person drives with a blood alcohol concentration in excess of that allowed by law. The accused's degree of impairment is not an issue under "per se" laws.

Laws that use blood alcohol concentration to create presumptive standards, on the other hand, allow the accused to submit evidence that he or she was not, in fact, impaired at the prescribed limit. They also allow a prosecutor to submit evidence that a driver was impaired, even though his or her BAC was less than the presumptive limit established by the statute. A State may have both a "per se" law and a law prescribing presumptive standards on the basis of blood alcohol concentration.

The rationale of "per se" laws is that they increase the likelihood of convicting a drunk driver because it is no longer necessary to prove impairment. It is only necessary to show that the driver's BAC exceeded the legal limit. According to theory, the effect of these laws in making convictions easier would promote general deterrence among the total driving population, and would thus be beneficial.

All but a handful of States now have some form of "per se" law. (Adoption of these laws is a requirement for receiving an incentive grant from the U.S. Department of Transportation.) However, there are variations in the laws.

Under the most prevalent variation of drunk driving statutes containing a "per se" provision, driving with an illegally high blood alcohol content is an alternative definition of drunk driving (driving while "under the influence" of alcohol, drugs, or both is the other). In a second variation, driving while under the influence and driving with an illegal BAC are separate offenses. Under this variation, a drunk driver could, in theory, be convicted of both driving while under the influence and driving with an illegal BAC. A third variation defines driving with an illegal BAC as a separate offense, but a less serious offense than driving while under the influence.

Assessment and Commentary

Effect on Alcohol-Related Accidents. There is no known scientific evidence that "per se" laws alone either have or do not have an effect on traffic safety. Evaluations of the safety impact of those laws in Europe and Canada have found that "per se" provisions usually are adopted along with other provisions and that any reductions in traffic accidents due to the total legislation could not be attributed to any specific component, including the "per se" provision. The rationale behind "per se" laws stated above, however, is reasonable and can be accepted provisionally, pending the availability of evidence to the contrary.

Effect on the Public. There is no evidence of any widespread awareness of "per se" laws among the public in general. Neither is there any reliable information on the public's perception of the effectiveness and efficiency of the law in reducing alcohol-related accidents. Certainly, there have been no reports of public outcry against the "per se" laws in jurisdictions that have passed them. It may be assumed that the public is essentially neutral on the subject and is likely to remain so in the absence of any widespread campaign to convince them otherwise.

Effect on the Legal System. Contacts with attorneys indicate they are highly aware of these laws. Acceptance is mixed, tending to be high among law enforcement officials and prosecutors, and low to moderate among defense attorneys. In some States, opposition from defense attorneys has been an obstacle to passage of the law. It should be noted that none of these impressions is supported by any scientific data.

The effort required to implement a "per se" law does not appear to be excessive. If anything, fewer legal system resources are needed to adjudicate drunk driving cases under a "per se" law because these laws reduce the number of legal issues that could arise. In addition, persons charged with a "per se" offense are less likely to contest the charge and will enter fewer pleas of "not guilty," and are also less inclined to appeal a "guilty" verdict. This reticence may also be attributed to the narrow range of legal issues that a "per se" law provides as a basis to contest the charge or a conviction resulting from it. Studies sponsored by the U.S. Department of Transportation's National Highway Traffic Safety Administration (MacDonald and Wagner 1984; Loeb 1980) did find an increase in guilty pleas and convictions. However, this has not been the case everywhere. Loeb's North Carolina study found no increase in conviction rates for drivers with measured BACs of .10% or higher because of pleas to a lesser included offense.

"Per se" laws have apparently not created any large scale problems in the justice system's operation. There have, however, been some reports that "per se" laws are increasing the number of drivers refusing to take a chemical test under an implied consent law. This might be expected, since the results of a proper chemical test would, in effect, determine guilt or innocence. No quantitative data, however, has been found on the magnitude of this effect in jurisdictions that have "per se" laws.

"Per se" statutes make guilt easier to prove once a driver has been arrested and charged. However, it does not free police officers from relying on bad driving and physical symptoms of intoxication in making the initial decision to stop the driver, and arrest him or her for drunk driving.

"Per se" laws have changed some aspects of defense strategy. Defense counsel no longer can attempt to show that, despite an unfavorable test result, the defendant was not "under the influence". Their attack has shifted to three aspects: (1) the initial stop and arrest; (2) the reliability of the testing device; and (3) the way the test was administered.

A persistent criticism raised by defense attorneys is that the impairing effects of alcohol vary too much from person to person to have a hard-and-fast "per se" standard of impairment based on chemical test results. Research does indicate variances in individuals' tolerance to the impairing effects of alcohol. However, the overwhelming majority of experimental and epidemiologic evidence indicates that the likelihood of an accident increases significantly in virtually everyone at blood alcohol levels exceeding .10% weight per volume.

Another technical issue is the effect that delay in giving a chemical test has on its accuracy in estimating the driver's BAC at the time he or she was driving. If alcohol was still being absorbed into the driver's body when he or she was stopped (that is, the driver's BAC was rising), then a test given a short time after the stop could give an inflated estimate of the BAC when the stopped driver was actually driving. A similar but opposite effect could occur when the driver's BAC was falling at the time of the stop.

Research indicates that there is a reasonable cause for concern on the basis of this issue. There are wide variances in the rate at which alcohol is absorbed and eliminated by different individuals. A precise calculation of an individual's BAC backward in time is not possible. Thus, the time delay between driving and testing should be set low enough to provide a reasonable assurance that, despite the test delay, an individual's BAC was above a given limit at the time he or she was driving. A maximum time delay of one hour should provide this assurance.

It should be noted that most existing "per se" statutes define the offense of driving with an illegal BAC in terms of the test result alone. They make no provision for "relating back" the test result to the time of driving. In addition, some statutes provide that a test result can support a conviction for driving with an illegal BAC if the test was administered within two hours of the driving and its results shows a BAC at or above the limit.

Effect on Raising Public Awareness. In all probability, the "per se" concept may be too technical and abstract for the general public and potential drunk drivers to understand fully, unless great care is taken to communicate it. However, there is no reason why effective messages concerning the potential effect of "per se" laws on drunk drivers could not be created and delivered to selected audiences or even the general public.

Minimum Drinking Age

Description

Minimum drinking age laws establish the age at which a person may purchase or possess alcoholic beverages. From the repeal of Prohibition until the 1970s, the legal age was 21 in most, but not all States. After the 26th Amendment to the U.S. Constitution was passed in 1971, many States lowered the legal age to 18. An increase in alcohol-related traffic accidents among young adults led many States to adopt higher drinking ages. There has been, especially in the last decade, variation in legal drinking ages among adjoining States. This led Congress to enact a federal statute, 98 Stat. 435, P.L. 98-363, §6(a) (codified as 23 U.S.C. §158 (West Supp. 1985)), which requires all States to adopt 21 years as their minimum drinking age by October 1, 1986, or lose five percent of their funding for projects covered by the Federal Aid Highway Act.

Assessment and Commentary

Effect on Alcohol-Related Accidents. The legal drinking age is one of the most studied issues in the field of highway safety. It is also one of the most widely reviewed in literature surveys. This project will not add to this growing body of literature, except to note that the highway safety value of these laws has never been established unequivocally. As soon as one study is published showing a positive effect, another study emerges refuting that study and all previous studies that found a positive effect.

After examining this literature, this project has concluded that minimum drinking age laws generally tend to reduce the risk of an alcohol-related accident, but that the amount of the reduction is unknown and probably related to a host of demographic, economic, cultural, and other variables. It also seems likely that if all States adopt the same minimum age, then its effects would be enhanced by eliminating so-called "bloody borders" that exist between States that do not have identical drinking age laws.

Effect on the Public. For the most part, minimum drinking age laws have been accepted by the public, and the public appears to support a uniform national age. However, there are some exceptions. A number of State legislatures and public officials oppose a national standard as an infringement of States' rights, oppose an age of 21, or both.

Effect on the Legal System. There appear to be no serious problems for the justice system that have been created by minimum drinking age laws, except for the difficulties in agreeing on what the age should be. There are, however, several legal constraints that should be considered.

Any minimum drinking age is a form of prohibition and therefore difficult to enforce. The vast majority of underage persons have used alcohol, and a considerable number use it regularly. The extent of noncompliance and the limited resources available for enforcement generally limit law enforcement agencies to taking action against aggravated violations. These include incidents such as establishments regularly selling alcoholic beverages to underage customers, "house parties" and similar gatherings attended by large numbers of underage persons, and flagrant public violations such as possessing open containers in vehicles.

Effect on Raising Public Awareness. There is no reason why raising the drinking age would, in itself, promote the general public's knowledge about highway safety. It has, however, increased discourse about the role of persons under 21 years of age in alcohol-related accidents and may have raised awareness of the drunk driving problem posed by persons in this age group.

The main informational problem is the communication of accurate information about the law, including its rationale and expected effects. A strong justification will have to be provided to counterbalance perceived losses in freedom among persons under 21 years of age, and among others, such as tavern owners, who will be affected by it.

Improved Evidentiary Aids and Procedures

Description

A number of devices and procedures have been proposed for improving the quality and efficiency of drunk driving arrests and gathering more persuasive evidence for use at trial. Three aids involving technology were considered in this project. They are:

- ◇ Preservation of breath specimens, in which a set of procedures is followed for the handling, storage, and preservation of breath specimens from the time of testing to the time the drunk driving prosecution is concluded;
- ◇ Video taping of a suspect's behavior, in which a driver under arrest for drunk driving is asked to perform a series of physical sobriety tests, and his or her performance of those tests is video taped for use at trial for the purpose of demonstrating impairment by alcohol; and
- ◇ Preliminary breath testing, in which a police officer uses a portable device called a preliminary breath tester (PBT) to determine whether a suspect should be arrested for drunk driving. In most preliminary breath testing procedures, the testing officer already has probable cause to believe the driver is under the influence and uses the PBT to verify his or her belief. However, another proposed use of the PBT is to establish probable cause in "marginal" cases of driver impairment, or to determine alcohol involvement in accidents and moving traffic violations. (For example, Neb. Rev. Stat., §39-669.08(3)(1984) and N.Y. Veh. & Traf. Law, §1193a (McKinney Supp. 1984-85)) appear to authorize the testing of all traffic violators.)

Two other technological procedures were not specifically addressed but have been proposed and evaluated in other contexts. They are:

- ◇ Passive, or "noncooperative" breath testers (NCBTs), in which a police officer places a device, resembling a wand, flashlight, or wristwatch, near a driver. The device—which exists on an experimental basis, but is not in general use—determines whether the driver's expelled breath contains alcohol or, possibly, how much alcohol the driver's breath contains; and
- ◇ Roadside testing of suspected offenders, in which evidentiary tests are administered at a portable facility, such as a van, rather than at a fixed location, such as a police station.

Assessment and Commentary

Effect on Alcohol-Related Accidents. Used properly, these technological evidentiary and detection devices and techniques should promote more accurate identification of persons who are drunk drivers. They should therefore enhance deterrence of the general driving public and help reduce recidivism.

Specifically, horizontal gaze nystagmus, PBTs, and video taping increase the probability that drivers suspected of driving while drunk will be arrested and found guilty. Roadside testing (such as is done with the FBT) tends to reduce the amount of time a police officer spends transporting suspects to a police station or other testing facility and increases the officer's efficiency. Furthermore, the highly visible use of some devices (for example, vans used for roadside testing, or PBTs used in connection with selective enforcement programs) creates an additional deterrent effect on the general driving public.

The preservation of breath specimens does not by itself reduce drunk driving. However, it reduces the likelihood of unsuccessful prosecutions that may result from failing to establish at trial a chain of custody for the blood alcohol evidence, or withholding potentially exculpatory evidence from the defense. In this indirect way, it supports deterrence of specific individual defendants and reduces recidivism.

The "noncooperative breath tester" (NCBT) has been proposed for use in connection with sobriety checkpoints, post-accident investigations, and routine traffic law enforcement to identify impaired drivers who are able to mask the physical signs of their alcohol impairment. These devices, if used, would be expected to promote general deterrence.

Currently, no evaluation is known to have been conducted with respect to these devices' effect on drunk driving. However, studies in several jurisdictions (for example, MacDonald and Wagner (1981)) have found that police officers regard PBTs as highly useful in deciding whether to arrest a stopped driver. These studies also suggest that the use of PBTs may increase the number of drunk drivers with lower blood alcohol levels (especially in the range of .10 to .15 percent) who are arrested.

Effect on the Public. It is possible that the public would consider video taping and PBTs too intrusive, although there is no data to support this. At this time, however, it is doubtful whether either device is sufficiently well understood to be a major concern to the general public. It appears likely that only their gross misuse would provoke any kind of adverse public reaction.

Public reaction to the "noncooperative breath tester" (NCBT), however, may not be as accepting. The device could provoke a strong and adverse reaction, especially if it is used on a wide scale, for example, after every traffic stop.

Vans used for roadside testing are often marked with identifying signs (such as "DWI Testing Van") and anti-drunk driving logos designed to capture public attention. Therefore, roadside testing vans can be a means of increasing public awareness of enforcement efforts.

Preservation of breath specimens has little or no effect on the public because it receives little publicity outside the criminal justice system and is connected with legal issues about which the public is not generally aware.

Effect on the Legal System. All evidentiary aids and procedures are connected with arrest and trial and therefore must comply with protections accorded by the U.S. Constitution. Specific provisions of the U.S. Constitution include:

- ◇ The Fourth Amendment's prohibition against unreasonable searches and seizures.
- ◇ The Fifth Amendment's privilege against self-incrimination; and
- ◇ The Fifth and Fourteenth Amendments' requirement of due process of law.

In addition, procedures involving testing for alcohol impairment must be consistent with State law, especially implied consent statutes.

Effect on Raising Public Awareness. Preservation of breath specimens will have no significant effect on heightening the public's awareness of this procedure's contribution to more effective drunk driving enforcement. However, many of the other evidentiary aids—video taping of suspected offenders, roadside testing, PRTs, and especially NCBTs—are newsworthy and can be expected to generate publicity. This, in turn, should increase the public's perception that drunk driving laws are being more efficiently enforced and that the opportunity for a drunk driver to avoid conviction is lessened.

Required Chemical Testing of Drivers Involved in An Accident

Description

Alcohol is involved in a disproportionately high number of personal injury and fatal traffic accidents. Those accidents have received much closer attention in recent years. Consequently, the prosecution and conviction of drinking drivers responsible for serious accidents has become more common. Still, many prosecuting attorneys and traffic safety officials are not satisfied with the frequency of prosecution and conviction of drivers at fault in these accidents. As a result, it has been proposed that all drivers involved in accidents be tested, whether or not there is probable cause to believe that a particular person drove while under the influence of alcohol.

One difficulty in proving a person guilty of aggravated drunk driving offenses (manslaughter, vehicular homicide, and the like) is the problem of establishing the driver's mental state, which may have a bearing on demonstrating recklessness or gross negligence. These are typical elements that must be proved in this type of offense. In that regard, establishing the driver's intoxication is very important. Chemical test evidence is vital in proving these elements.

However, obtaining a sample of breath or blood from the driver can present problems. Problems typically arise if the driver was unconscious, transported to a hospital after the accident, or was mindful of the consequences of potential test results and therefore refused to submit to a test.

In most States, the implied consent law governs testing for alcohol content in connection with aggravated drunk driving offenses. One weakness of implied consent statutes in these cases is that a driver may refuse to submit to a test and instead risk a license suspension. In addition, some States' implied consent laws, as written, prohibit the withdrawal of blood from an unconscious driver because he or she was not given the opportunity to refuse the test before it was administered.

In certain States, the threat of a license suspension under the implied consent law is not the only means of obtaining a specimen from a driver suspected of a drunk driving offense. Some implied consent statutes give a police officer the power to require a driver to submit to a test, provided the officer has probable cause to believe the driver was intoxicated (and, in some States, has obtained a warrant or court order authorizing the testing). The officer's power to conduct forcible tests is, however, limited by the constitutional requirement (described in *Breithaupt v. Abram*, 352 U.S. 432 (1957)) that the officer avoid using excessive force to obtain the specimen.

Laws in some countries, most notably Britain's Road Safety Act, authorize police officers to test all drivers involved in traffic accidents and even drivers stopped for suspected traffic offenses. A number of U.S. jurisdictions have enacted laws authorizing prearrest screening tests for all drivers involved in accidents. These include, for example, Iowa Code Ann., §321B.3 (West 1985), Minn. Stat. Ann., §169.123 (West Supp. 1985), and N.C. Gen. Stat., §20-16.3(a)(1)(b)(1983). Some of those laws do not require probable cause on the officer's part as a condition of testing.

Assessment and Commentary

Effect on Alcohol-Related Accidents. The principal rationale for universal testing of drivers involved in accidents is to prosecute more effectively those whose alcohol impaired driving causes traffic accidents. To the extent that test results strengthen the prosecution's case for conviction, and increase the penalties imposed on

drivers who are at fault and ultimately found guilty, universal testing would increase specific deterrence—that is, punished drivers will be less likely to commit another offense.

However, the effect of universal testing as a deterrent to the general public is probably uncertain, at best. It is reasonable to assume that the trial and conviction of a person charged with a serious drunk driving offense likely would generate publicity that could increase public awareness. Universal testing would have an additional subsidiary benefit. It would provide additional statistical data for researchers. Information obtained as a result of this testing could be used to reveal more information about the drunk driving problem and the offenders.

Effect on the Public. Public sympathies currently lie with the victims of fatal traffic accidents, rather than with drivers suspected of being at fault. A universal testing program in connection with fatal accidents, or even all accidents, would affect a far smaller segment of the driving public than certain other drunk driving laws such as sobriety checkpoints. They may, therefore, be expected to arouse considerably less public opposition. For this and other reasons, public and legislative support for universal testing of drivers involved in accidents would likely be high.

Effect on the Legal System. Statutes requiring the testing of all drivers involved in automobile accidents could be expected to increase the number of prosecutions for aggravated offenses related to drunk driving and the number of convictions for those offenses. Still, the number of these cases is expected to be relatively small compared to other criminal prosecutions and, therefore, the increases in the prosecution's and court's workload (if any) and the jail population would probably not place a significant additional burden on the justice system.

Effect on Raising Public Awareness. Statutes requiring all drivers involved in accidents to be tested raises constitutional and statutory issues that are more readily understood by judges, attorneys, and police officers than members of the public. If publicized, the statute probably would not have a great impact on drivers in general, since the differences between the present and proposed practices are more subtle and the number of people to be affected is small.

Drivers prone to be involved in accidents, especially the more "streetwise" ones, might be more aware of their legal rights and obligations (especially since police officers are required to advise them of the consequences of submitting to and refusing tests). If a statute calling for universal testing is enacted, it can be expected that police officers and prosecuting attorneys, in particular, will quickly learn of the testing requirement and apply it as soon after its effective date as possible.

Administrative Summary Suspension of the Driver's License

Description

Until recently, the "traditional" method of taking license action against a drunk driver was to impose a license suspension after the driver was convicted of drunk driving. However, in many instances, months or even years elapsed from the time of the offense until the time the suspension occurred. To ensure that the sanction of license suspension occurs more swiftly after the offense, "administrative summary suspension" of a drunk driver's license has been proposed.

Administrative summary suspension statutes typically require the arresting police officer to seize the license of a driver who either refuses an evidentiary chemical test for alcohol or "fails" it (has a blood alcohol at or above the legal standard of intoxication). The arresting police department issues the driver a receipt and forwards the seized license to the State driver licensing agency. The receipt serves as a temporary license until the driver licensing agency has taken final action.

The administrative license suspension procedure operates independently from the criminal charge for drunk driving. Therefore, it is possible for a driver to receive an administrative suspension in connection with an incident for which he or she was not convicted of drunk driving. In some States, license suspension is imposed by the driver licensing agency only. In other States, the drunk driving laws call for mandatory suspension of a

license upon conviction of the criminal drunk driving charge, but provide that any suspension period already imposed by the driver licensing agency is deducted from the court imposed penalty.

Assessment and Commentary

Effect on Alcohol-Related Accidents. Deterrence theory suggests that administrative summary suspension would, by decreasing the time lapsing between the offense and the punishment, increase specific deterrence. In effect, it would tend to discourage punished offenders from committing the same offense again. This, in turn, would more quickly incapacitate the offender and, provided the offender complied with his or her suspension, have some effect on the number of drunk driving accidents likely to occur. The practical effect of administrative summary suspension on deterring the general public and reducing the frequency with which they drive is less clear. The amount of deterrence depends on how much drivers fear loss of their license and how well the administrative suspension procedure is publicized.

Effect on the Public. Many citizens may not fully understand the concept of administrative summary suspension. However, the fact that a license is seized at the time of arrest would have an impact on the public. Immediate license seizure can be publicized as another means of "getting tough" on drunk drivers, and a means of taking license suspension cases out of the hands of judges. For these reasons it may be expected to receive public support.

Most of the opposition to administrative summary suspension has come from elements of the organized defense bar on the grounds that the concept provides punishment before trial and is therefore unfair. Their objections probably represent a minority view in terms of public opinion, but appear to be very influential within some State legislatures.

Effect on the Legal System. A driver's license has been classified by the U.S. Supreme Court as an "important interest" protected by the Due Process Clause. Therefore, it cannot be revoked or suspended without a hearing. The Due Process Clause raises two questions: (1) whether a license suspension can occur before a hearing; and (2) whether it can occur after a hearing but before trial on the drunk driving charge.

The creation of an administrative summary suspension procedure tends to have several effects on the legal system. The driver licensing system's workload—both hearings and paperwork—will increase. In a few States, it has been reported that driver licensing system personnel have not kept pace with their increased workload. However, this situation appears to be the exception and not the rule. Since the administrative suspension may go into effect before the trial, defendants charged with drunk driving will probably be more inclined to plead guilty and will be less likely to seek a delay of the trial.

Effect on Raising Public Awareness. Administrative summary suspension is very understandable to personnel within the justice system. However, as pointed out earlier, the concept is not as well understood by the general public. It is possible that an administrative system, properly publicized, will create among some members of the public an additional motivation not to drive after drinking.

Restriction or Elimination of Charge Reduction

Description

Restricting or eliminating the ability to reduce charges narrows a prosecutor's authority to substitute for a drunk driving charge some lesser, non-alcohol related offense, dismiss the charge, or not file a drunk driving charge in the first place. The rationale of restricting the prosecutor's charging discretion is that charge reduction, or diversion from the traffic law system at an early stage of a criminal prosecution, prevents the risk of an individual drunk driving event from being fully assessed. It also eliminates many options for appropriate actions by the justice system to reduce future risk. Further, failure to charge an offender with a drunk driving offense may prevent the system from accurately identifying the risk the individual presents if he or she should commit a subsequent offense, because the original charge reduction will most likely result in there being no record of the first offense in the offender's driving record.

State legislation, most of it enacted during the last several years, has placed a number of restrictions on the prosecutor's ability to reduce or dismiss charges. Some States have effectively limited, or at least restricted, the prosecutor's authority to plea bargain.

The least stringent statutes require the prosecutor to make a public disclosure of the reasons for making a plea bargain to reduce a charge to an offense less serious than drunk driving. A few States expressly require court approval for plea bargains in drunk driving cases. Finally, a number of States by statute flatly forbid plea bargaining when the defendant's blood alcohol level is at or above a given level (usually the legal standard of intoxication) if the evidence supports a drunk driving conviction. (Some State statutes forbid a trial judge to accept a plea to a lesser offense in these cases.)

Even in States that prohibit charge reductions, a prosecuting attorney conceivably could avoid the letter (though not the intent) of charge reduction statutes by failing to charge the defendant in the first place. However, a few States' statutes require the prosecution to bring an initial charge of drunk driving when the evidence (principally the chemical test result) indicates that such a charge would be appropriate. In other States, where the traffic citation issued by the police officer serves as the charging instrument, the prosecutor may not have the option of deciding whether to charge.

A number of States restrict charge reduction by requiring the adjudication of drunk driving cases. Under the most common mandatory adjudication statute, a judge may not divert a drunk driving offender under either a statutory or nonstatutory program. A few States also forbid a judge to engage in certain delaying techniques, such as continuing the action for an extended period of time or postponing sentencing while the defendant participates in a treatment program similar to diversion.

Finally, a number of States allow a defendant to participate in a diversion program or enter a guilty plea to a lesser offense only on the condition that the defendant receive a license suspension and participate in alcohol education and treatment. Many of those laws provide that a defendant who is charged with drunk driving a second time after participating in such a program must be charged as a second offender.

Assessment and Commentary

Effect on Alcohol-Related Accidents. Eliminating or restricting charge reduction impacts on two major factors believed to be related to reducing drunk driving.

The first of these is, as indicated above, accurate risk identification. Limiting charge reduction enhances "risk identification" by removing the opportunity for a "high risk" offender (such as a person with an alcohol problem) to hide in a labyrinth of charges and convictions for offenses that are unrelated to those involving alcohol. Without the ability of identifying repeat offenders, proper action cannot be taken by the justice system to reduce risk, because the person will not be identified through subsequent and successive convictions.

The second factor impacting on drunk driving that is helped by curbing charge reduction is the assurance that the full range of sanctions authorized by law—including jail, license action, fines, and mandatory alcohol education and treatment—is available for use by the sentencing judge.

Effect on the Public. Although no data is known to exist on the subject, it is probable that limits on charge reduction would be, in today's climate, strongly supported by the public. In most States that have laws eliminating or restricting charge reduction, the only known strong opposition has come from the defense bar. However, other potential sources of opposition include judges faced with increased trial dockets, individual prosecuting attorneys who would lose some of their authority regarding the handling of these cases, and police officers, whose documentation of arrests would become more extensive in light of the possibility that every drunk driving case could go to trial.

Effect on the Legal System. A major reason behind prosecutorial policies favoring large scale charge reduction or diversion is the need, actual or perceived, to reduce the prosecution's and the courts' traffic caseload. The caseload problem is exacerbated by the need for more time consuming processing (for example, jury trials) of cases and could reach crisis proportions if some accommodation is not made to relieve it. It is

aggravated in some jurisdictions by the lack of funds or personnel required to handle the court's caseload or by obsolete management systems (such as manual record keeping). In some instances, plea bargaining has resulted from a perception that the penalties for a given offense are excessive or not sufficiently flexible to accommodate all offenders. However, during the last few years, public opinion has tended to favor harsher treatment of drunk drivers.

Effect on Raising Public Awareness. A statute or policy that eliminates or restricts charge reduction is likely to generate significant news media attention. It is reasonable to assume that the driving public, and particularly prior drunk driving offenders, will take cognizance of it and grasp its significance as a threat to their ability to conceal successive drunk driving offenses.

It will also strongly affect the quality of information available to justice system personnel to identify persons who are likely to commit drunk driving offenses. The degree to which that information is effectively communicated to these personnel will be dependent upon existing information system and communications capabilities, such as a State's driver records system.

Reduction or Elimination of Judicial Discretion in Sentencing First Offenders

Description

Limiting judges' discretion in sentencing is usually accomplished by a statute. These laws narrow traditional judicial discretion to select from a broad range of case dispositions involving persons convicted of first offense or subsequent offenses of drunk driving. They restrict a judge's freedom to select both the type and severity of sanctions by statutorily requiring the court to impose mandatory minimum sanctions, forbidding sentencing judges to use certain sanctioning techniques (such as suspending or probating certain offenders), or both. In many jurisdictions, statutes limiting judicial discretion have been coupled with laws directed at plea negotiation.

The major mandatory sanctions imposed on drunk drivers include license action, fines, and confinement to jail. Many States' drunk driving laws also provide for other sanctions, especially community service, restitution to victims, and alcohol evaluation and treatment.

All States provide for the potential suspension or revocation of the driver's license of a person convicted of first-offense drunk driving. State laws vary, however, with respect to the length of the suspension (minimum suspension and allowable range of suspension), and whether the revocation or suspension is mandatory. Likewise, all States provide for the potential imposition of fines and costs on convicted drunk drivers. As in the case of license action, there is variation among States with respect to minimum fines and the range of allowable fines. Finally, a number of States have legislated mandatory minimum jail sentences.

However, very few States have laws that do not contain "loopholes" for avoiding mandatory sentences. For example, a restricted driver's license is available in most States for permitting driving in circumstances where the inability to drive would impose a severe hardship on the convicted drunk driver or others. "Mandatory" jail sentences can be avoided in some States through laws allowing the judge to suspend the jail sentence if jail would constitute a risk to the driver's physical or mental well being. In other States, the judge is allowed to substitute community service for jail as a sentence. Thus, even when "mandatory" sentences are prescribed, the actual sentence a convicted first offender receives often depends, to a greater or lesser extent, on the decision of the sentencing judge.

Studies indicate that the most effective drunk driving sanctions are certain, severe, and swift. Eliminating or reducing judicial discretion specifically addresses the first two of these elements. Those favoring mandatory sentences argue that judges have imposed sentences less severe than the law allows as well as less severe than warranted by the gravity of the offense. They further contend that the lenient sentencing has, in turn, diluted the potential deterrent effect of drunk driving laws.

Assessment and Commentary

Effect on Alcohol-Related Accidents. The effect of mandatory sentences on the alcohol-related traffic accident problem is largely unknown. It is known that actions against the driver's license can have a positive effect on both general deterrence and recidivism.

On the other hand, the jail sanction has not been adequately evaluated, and the evaluations that have been conducted have been inconclusive. The lack of evaluation has been the result of the infrequency with which first offenders have actually gone to jail. This infrequency is caused by "loopholes" in the mandatory sentencing laws that permit the "mandatory" jail sentence to be avoided, and the reluctance of judges to send offenders to jail (despite having the legal authority—and sometimes even the obligation—to do so), or both.

More recently, however, for a variety of reasons, this picture has changed and several careful evaluations have recently been initiated. These evaluations are important to this assessment, because it is the jail sanction that is most often at issue in discussions of judicial discretion in drunk driving sentencing. Some new data offers potential evidence that strong sanctions, widely applied, can reduce alcohol-related accidents, at least among drivers who have received the sanctions.

Effect on the Public. Public awareness of the jail sanction appears high. In Hennepin County, Minnesota, 61 percent of all respondents to a telephone interview, and 59 percent of respondents who drank more than once a week were aware of the sentencing policy. In Davidson County, Tennessee, which includes Nashville, awareness of mandatory jail reported in a questionnaire survey was 50 percent of all respondents and 79 percent of respondents who drank more than once a week.

Effect on the Legal System. Several studies have investigated the effect of mandatory jail on the justice system's operation. For example, research in the States of Washington, Tennessee, and Arizona has found that failures to appear in court increased, findings of guilty decreased, diversions and charge reductions increased, jury trials increased, pleas of "not guilty" increased, and more time was spent on drunk driving cases by prosecutors and judges. By contrast, the Hennepin County study reported none of these negative effects. That study also found that no great overcrowding of the jail occurred as a result of the new policy.

Effect on Raising Public Awareness. Mandatory jail laws have generated much news media attention wherever they have been used. This appears to stem primarily from their impact on the jails, which have created some highly newsworthy methods for coping with overcrowding—for example, establishing "tent cities" or housing prisoners on weekends in school gymnasiums. In addition, a large portion of the general public fears being placed in jail. For example, reports (which were not accurate) to the effect that the 1982 amendments to California's drunk driving law required the jailing of all offenders attracted a great deal of news media and public attention. Aside from that attention, however, the mandatory jail sanction would have no effect in itself on increasing the public's awareness about the dangers of drunk driving.

Server Liability for Alcohol-Related Accidents

Description

"Server liability" means the imposition of civil liability on certain servers who provide alcohol to intoxicated or underage individuals. Specifically, the server (that term includes both commercial establishments and social hosts) is civilly liable to those who suffer injury or other harm as the result of the intoxicated or underage person's irresponsible use of alcohol. Thus, servers providing alcohol to drivers who later harm themselves and others in alcohol-related accidents can be required to pay damages to the accident victims.

Commercial establishments are civilly liable in a majority of States. In most of those States, their liability is based on a statute. Those statutes are generally called "dram shop" laws because they were first introduced over a hundred years ago to make tavern owners financially responsible for supporting the families of customers who were "habitual drunkards." After Prohibition, the laws were used in suits against commercial establishments that served persons who later became involved in automobile accidents. The typical dram shop

law imposes civil liability for damages caused by the establishment's providing alcohol to "visibly intoxicated" or underage customers.

The second legal basis for a commercial establishment's liability is the common law. The New Jersey Supreme Court was the first to hold that liability could be imposed on a tavern under common law negligence without the necessity for an explicit dram shop law (*Rapaport v. Nichols*, 31 N.J. 188, 156 A.2d 1 (1959)). A growing number of State courts—some of which created a civil cause of action on the basis of existing laws forbidding taverns to serve minors or intoxicated persons—have since imposed common law liability on establishments.

To provide eligibility to recover damages under a dram shop law, an injured party must show the following:

- ◇ He or she was a member of the class of persons entitled to recover damages. (For example, in some States, an intoxicated driver who is injured may recover. In other States, he or she may not.);
- ◇ The server provided alcohol to a "visibly intoxicated" or underage person (in the case of a typical dram shop law) or failed to exercise reasonable care with respect to serving alcohol (in the case of a common law action against the server); and
- ◇ The server's providing alcohol caused the harm that the injured party suffered. Not only must consumption of alcohol have been a cause of the injury, but that particular server's actions also must have been a cause.

Dram shop laws vary from State to State. The variables include who may recover, how much time the victim has to file a suit after being injured, how much money he or she may recover, and whether solvent defendants must pay their insolvent codendants' share of the damage award.

Assessment and Commentary

Effect on Alcohol-Related Accidents. No published research is known that evaluates the effect of server liability laws on alcohol-related motor vehicle accidents. However, the laws clearly seek a general deterrent effect through the threat of a financial judgment against a server, rather than jail or loss of the driver's license suffered by the drunk driver.

There is evidence from roadside surveys of drivers that many drinking drivers have been served their alcohol in commercial establishments. Persons who drink in these establishments are the individuals who server liability laws seek to keep from drinking excessively and then driving. There is also evidence that this group may be heavier drinkers than are other groups of drivers. Research shows that heavy drinkers (including alcoholics and "problem drinkers") are greatly overrepresented in serious traffic accidents. There is also at least anecdotal evidence that large judgments have occurred in many recent server liability cases and that commercial servers are much concerned about this "trend." Recently, servers have increasingly taken steps to reduce their exposure to lawsuits by undergoing training to recognize and deal with persons who have drunk too much to drive safely. A study reported in the October 1983 issue of *American Psychologist*, however, disputes the ability of persons to estimate the sobriety of individuals and thereby challenges the basis for imposing liability under dram shop laws.

Nevertheless, server liability appears to offer some aspects of a successful strategy that will deter the general public from drinking and driving, although it could be argued that the requirement for quick imposition of punishment is not met. Further, while there is no guarantee that denial of access to alcohol in some settings would prevent access in alternative settings, one would expect at least some fraction of heavier drinkers and a larger fraction of moderate drinkers to be thwarted in some instances by the imposition of server liability.

Effect on the Public. No publicly available published reports are known that contain scientific surveys of public attitudes on server liability. However, responses to legislation (existing and proposed) reported in the news media have been predictable—the groups directly affected by the financial liability have strongly opposed the laws.

Dram shop laws have generally been opposed by commercial servers, on the grounds that the costs of legal defense and liability insurance have become prohibitive. Social host laws have been opposed by the general public, especially those who fear being financially ruined by a lawsuit resulting from their entertaining of others.

On the other hand, dram shop liability enjoys strong support from the organized bar in many States, because it provides drunk driving accident victims with a means of recovering damages. Both dram shop and social host liability laws are supported by anti-drunk driving groups, who see more responsible serving practices as a way to help eliminate drunk driving.

Effect on the Legal System. The effects of server liability on commercial establishments and social hosts will be dealt with in State legislatures, as indicated above. In some States, legislatures will deal with server liability as part of a larger issue posed by increasing liability awards and insurance costs. Since server liability is civil in nature, enforcement is carried out by victims of alcohol-related accidents, not by the police. Thus, any increase in activity in relation to server liability will not increase the workloads of law enforcement agencies. Currently, server liability actions are not so numerous that the courts have become "clogged" with them. The court systems' problems in handling these cases, such as delay, are common to all civil actions.

There are no significant constitutional constraints that apply to dram shop and social host liability laws. State legislatures generally have the power to create or abolish civil causes of action, and State courts likewise have the power—subject to legislative checks on them—to create common law causes of action.

Effect on Raising Public Awareness. Both dram shop and social host laws will most certainly receive wide attention in the news media. Court decisions holding social hosts liable gained wide attention in the press. Civil liability leads to large judgments which are inherently newsworthy, especially in light of widespread concern over the cost of liability insurance.

The publicity generated by individual actions against servers is reinforced by the larger debate over whether, and to what extent, liability should be imposed. Supporters and opponents of server liability have already directed substantial efforts toward influencing State legislatures, and have participated actively in public relations efforts. Therefore, those who wish legislatures to adopt server liability—especially social host liability—must also be prepared to participate effectively in a major public relations effort.

Admissibility of Evidence of Alcohol Impairment in a Civil Case

Description

Passengers and other persons who are injured in alcohol-related accidents often file civil actions to recover damages from the drunk driver. However, the evidence gathered by State authorities for use in prosecuting the drinking driver is not admissible in civil cases filed by private citizens. Persons injured in drunk driving accidents (including the drinking drivers themselves) sometimes file suit against the manufacturers of the automobiles in which they were traveling at the time of the accident, as well as against the governmental bodies responsible for building and maintaining the roads which they used.

In some instances, plaintiffs are at least partially the cause of the accidents that led to their injuries. However, judges and juries in civil cases do not have an opportunity to take into account the driver's impairment as reflected in the evidence gathered in conjunction with a drunk driving prosecution of the driver when determining liability or the amount of damages.

It has been proposed that certain evidence gathered by the State to prosecute a drunk driver be permitted to be introduced in civil proceedings if it tended to show that the driver contributed to his or her injuries, and those of the passengers, by being impaired by alcohol or drugs at the time of the accident. It is also highly likely that, if it were permitted by the rules of evidence or an appropriate law, then evidence of impairment would also be introduced by counsel representing victims killed or injured as the result of an alcohol-related or drug-related accident.

The purpose of permitting evidence of impairment to be used in civil cases is to prove that driver impairment—the inability to control a vehicle or take proper action in the event of a driving emergency—was a cause of the accident. The evidence permitted to be offered would consist of chemical analysis of the driver's breath, blood, or other body fluids, as well as other qualitative evidence of the driver's impairment.

Assessment and Commentary

Effect on Alcohol-Related Accidents. It is unlikely that permitting the introduction in a civil proceeding of evidence of the driver's impairment that has been gathered by the State in a drunk driving prosecution would have a significant deterrent effect on the general driving public. Studies conducted in other contexts suggest that most drivers discount the possibility of their being involved in an accident. In fact, public perception regarding the likelihood of accidents has been one reason for historically low seat belt use rates in the absence of mandatory belt use laws. Not only does the public perceive that a traffic accident "can't happen to me," but it is unaware of or may not fully understand the rather abstract legal concepts of contributory and comparative negligence, which are the basis of this proposal. Therefore, the admissibility of evidence of alcohol impairment derived in a drunk driving prosecution cannot be expected to have a major impact on alcohol-related accidents.

Effect on the Public. This proposal, if adopted, may increase the probability that an impaired driver who is sued by the victims of an accident would be found liable. Given today's climate, the jury may choose to "punish" the driver for his or her conduct and award an even larger amount of damages.

This proposal would, however, have a less certain effect on actions in which the impaired driver is claiming to be a victim. Although the public is currently unsympathetic toward drunk drivers, it is also unsympathetic toward such "deep pockets" as automobile manufacturers, State transportation departments, and county road commissions. "Hard" cases in which a drinking driver's family is denied damages on account of the driver's alcohol impairment may not be accepted by the media and elements of the public. In addition, juries are likely to award damages to drivers who bring law suits although they were impaired by alcohol or drugs, and also their passengers, on the basis of sympathy.

In the legislatures and within the legal profession, this proposal can be expected to touch off sharp debate, especially between the plaintiff's and defense bar.

Effect on the Legal System. The U.S. Constitution places no significant restrictions to admitting in a civil proceeding evidence of alcohol impairment that has been obtained for the purpose of prosecuting a drunk driving offense. In some States, narrowly drafted implied consent laws may bar the use of test results in a civil case, if the tests were taken in connection with a possible prosecution for an alcohol-related traffic offense. However, neither rules of evidence, court decisions interpreting those rules, nor a perception within the legal community that the introduction of impairment evidence is improper, pose insurmountable legal obstacles.

In a civil case, evidence of a driver's alcohol impairment should be used to prove who caused the injury. Its purpose is not to vilify an individual or unduly prejudice the jury against a party to the action. It is directed at the issue of causation, not fault.

However, trial attorneys, as well as many judges, take the position that raising the issue of the driver's impairment often works to inflame the jury's prejudices against drunk drivers in general. In their view, the potential abuse overrides its value in identifying the driver's conduct as the proximate cause of the injuries. Therefore, counsel seeking to have evidence of impairment introduced at trial must carefully lay a foundation, showing that alcohol or drugs affect driving ability and cause certain driving errors to occur, and that the driver committed an error that an impaired person typically would commit. Laying this foundation requires counsel to educate the judge and jury about the specific effects of alcohol or drugs on driving. It also requires some degree of technical knowledge on the part of the attorney and the selection of credible experts capable of educating the jury.

Proving that a driver's impairment, not defects in the vehicle or roadway, caused an accident to occur is different from, and more difficult than, proving that driver's guilt of drunk driving. The elements of a drunk driving offense are not complex. They basically entail proving that the defendant was operating a vehicle and met the criteria necessary to fall within the statutory definition of "intoxicated". They do not include legal

concepts related to "causation" (such as assumption of the risk, proximate cause, and contributory negligence), and do not make allowances for the possibility that a given driver was, at the time of his or her arrest, posing no immediate threat to other drivers. Establishing that a driver's impairment caused an accident requires more than proof that his or her blood alcohol content was above the legal standard of intoxication. It requires showing that specific aspects of the driver's ability to operate a vehicle were probably impaired at the time of the accident, and that a sober, alert driver probably would have reacted to the events preceding the accident differently, and thus would have avoided the accident.

Effect on Raising Public Awareness. As stated earlier, admitting in civil cases evidence that was derived in the course of a drunk driving prosecution and that relates to the driver's alcohol or drug impairment will not result in the general public's heightened awareness about the consequences of being prosecuted for drunk driving. Rather, most awareness about the significance of this evidentiary matter will remain within the legal and forensic communities, State legislatures concerned with liability questions, and courts or legislative bodies concerned with developing rules of evidence.

Separate Offense with Enhanced Penalties for Driving with A Revoked, Suspended, or Restricted License

Description

Research indicates that the revocation or suspension of a convicted drunk driver's license is the most effective means of reducing the likelihood that the driver will commit another drunk driving offense. However, the effectiveness of license action is diminished by the fact that many offenders continue to drive after their licenses have been suspended or revoked, and that many offenders granted restricted licenses (to and from work, for example) ignore those restrictions. Many of these drivers compound the problem of driving with revoked, suspended, or restricted licenses by continuing to drive after drinking. One factor leading to this illegal driving (and sometimes drunk driving) behavior is the driver's perception that he or she will not be caught and, even if caught, will not receive a substantial punishment.

This chapter discusses remedying the problem of driving while revoked, suspended, or restricted by defining that conduct as a separate offense with enhanced penalties. These penalties include:

- ◆ Criminal penalties comparable in severity to those for drunk driving itself; and
- ◆ Mandatory administrative penalties—specifically an additional term of license revocation or suspension.

The rationale of these penalties is as follows: If the driver operated a vehicle after drinking, the prosecutor has the option of charging him or her for drunk driving, driving with a revoked, suspended, or restricted license, or both. Given those options, the prosecutor can choose the most effective strategy for prosecution. In many instances, it will be easier to prosecute the driver on the charge of driving on a revoked, suspended, or restricted license because there are fewer elements to prove. Conviction on that charge will nonetheless carry penalties severe enough to have a specific deterrent and incapacitative effect similar to those for drunk driving.

A number of States have, in the course of amending their drunk driving laws, provided for more severe penalties for driving while revoked or suspended, if the cause of the suspension was a drunk driving conviction. Those laws typically call for a mandatory minimum jail term, ranging from several days to a month or more, as well as an extension of the revocation or suspension term.

This proposal is broader than those laws. It would apply the enhanced penalties to persons whose licenses were revoked, suspended, or restricted for any reason (such as accumulation of violation points or failure to meet financial responsibility requirements). However, it is anticipated that the principal person affected by this type of law will be those who received license action as the result of a drunk driving conviction or an implied consent refusal.

Assessment and Commentary

Effect on Alcohol-Related Accidents. To the extent that convicted drunk driving offenders fear additional penalties such as jail, perceive their risk of being caught as high, and take the severity of punishment into account when deciding whether to drive, the proposed additional penalties will increase deterrence among them, and thus tend to reduce the risk that additional alcohol-related accidents will occur. The extent to which the proposed new law is publicized will also determine its deterrent effect on prior offenders. It may also be expected to have a similar effect on those who have not been convicted of drunk driving.

Effect on the Public. The public presently endorses strong action against those they perceive as the "hard core" drunk drivers. Therefore, they can be expected to support more severe sanctions against those who drive in spite of alcohol-related suspensions. However, public support may be weaker in the case of those suspended for other reasons. In many States, failing to respond to a citation for a moving offense results in the automatic imposition of a license suspension until the matter is resolved. The public and the news media may consider severe, mandatory penalties inappropriate for that class of suspended driver.

Effect on the Legal System. One effect that could be expected from enhanced penalties for these offenders is that the prosecution of some repeat offenders would be made easier. The prosecuting attorney could choose to charge the driver with that offense since it is easier to prove, but he or she may decide instead to use it as a lever to negotiate guilty pleas to either offense ("drunk driving" or "driving while revoked, suspended, or restricted") by agreeing not to charge the other offense in exchange. Anecdotal evidence suggests that this type of plea agreement often occurs when a driver is charged with drunk driving as well as one or more collateral charges (most often driving while suspended or refusing to take a test).

Another expected effect would be that more drivers would have their licenses revoked or suspended and for longer periods of time. This could either decrease the number of chronic alcohol traffic offenders who drive (if the suspended drivers comply with the license action) or increase the number of illegal drivers (if individuals continue to drive after receiving the enhanced sanctions). Those that continue to violate the law will probably eventually be sentenced to jail. In some jurisdictions, those familiar with the criminal justice system report that many "hard core" violators repeatedly violate both the drunk driving and driver licensing laws and are eventually sentenced and jailed on a "revolving door" basis.

In some instances, it may be more convenient for a prosecuting attorney to charge a defendant with driving while revoked or suspended. However, it may be more appropriate, in light of a driver's chronic drinking driving behavior, to charge with a second or subsequent drunk driving offense. These drivers pose such a risk to others that the more stringent penalties that can be imposed on multiple offenders are needed to deter and incapacitate.

Effect on Raising Public Awareness. It is expected that drivers sentenced for drunk driving will have the consequence of future drunk driving offenses explained to them at the time of sentencing. A warning about driving while still under suspension could be provided at the same time. If the legislation providing for enhanced penalties for driving while suspended is newly enacted, it probably will be publicized by the news media to the general driving population.

Implementing these kinds of enhanced penalties will require close cooperation among trial courts, driver licensing officials, and law enforcement agencies. Police officers must know the license status of the drivers they stop. In addition, driver licensing personnel must receive conviction abstracts from courts on a prompt and regular basis. If cooperation does not already exist, then bottlenecks may be created within the system.

Summary of Conclusions and Recommendations

This monograph has examined a number of sanctions and enforcement techniques designed to reduce the incidence of traffic accidents caused by alcohol-impaired drivers. Findings from the scientific literature as well as the judgment and experience of justice system personnel and of researchers and practitioners from other disciplines were used in assessing these sanctions and enforcement techniques. An attempt was made to synthesize all information made available during the course of the project. It was used to formulate a balanced, methodical assessment of the overall impact of each sanction and enforcement technique on highway safety, the

public, the legal system, and the impact in raising the public's awareness of drunk driving issues. The project's major conclusions and recommendations are summarized below:

- ◇ **Sobriety Checkpoints.** This approach is a promising tactic for deterring potential drunk drivers in the short term.
- ◇ **"Per Se" Laws.** "Per se" laws can support the deterrence of drunk driving and are believed to have a generally positive effect on highway safety. They can also prove the effectiveness and efficiency of the processing of drunk driving cases through the justice system. The adoption of "per se" laws should be supported. A blood alcohol limit of .10 percent weight/volume should be established for such laws. Chemical tests used in evidence should be taken within one hour of the stop or arrest.
- ◇ **Minimum Drinking Age.** Despite numerous evaluations in a variety of settings, the highway safety impact of minimum drinking age laws remains unknown. Nevertheless, there is reason to believe that the overall effect of these laws is beneficial. State laws establishing a minimum drinking age of 21 years should be adopted. However, each State's law should require that the drinking age law be evaluated periodically.
- ◇ **Server Liability for Alcohol-Related Accidents.** Laws and court decisions imposing civil liability for servers can limit the availability of alcohol to potential drunk drivers and therefore should have a positive effect on highway safety. A civil cause of action should exist against persons—including social hosts—who serve alcohol to visibly intoxicated persons or persons who are under the minimum legal age for consuming alcoholic beverages. Support should be provided to enact State "dram shop" legislation, oppose efforts to eliminate or limit common law server liability, and create a cause of action against providers of drugs.
- ◇ **Admissibility of Evidence of Alcohol Impairment in a Civil Case.** Relevant evidence of a driver's impairment by alcohol or drugs should be admissible in a civil case arising out of a traffic accident. "Relevant" evidence means evidence tending to establish that the driver's impairment was a proximate cause of the accident. The mere fact that a driver's blood alcohol content was at or above the legal standard of intoxication does not by itself meet the standard of relevance. Relevant evidence includes chemical tests carried out for purposes other than establishing impairment under State implied consent laws. For example, it would include postmortem examinations of deceased drivers. Legislation should be supported to specifically provide that the results of those tests be admissible.
- ◇ **Reduction or Elimination of Judicial Discretion in Sentencing First Offenders.** Mandatory jail sentences represent a viable approach toward multiple offenders, since those individuals present such an established threat to traffic safety. Mandatory minimum jail terms for multiple offenders should be supported, and they should be complemented with other punitive and rehabilitative sanctions. However, the project is not convinced that mandatory minimum jail terms for first offenders will have a highway safety effect large enough to justify the cost involved. Nevertheless, it does support the adoption of sanctioning policies by trial judges, which would establish sentencing criteria based on the first offender's blood alcohol level, past driving record, and "aggravating" circumstances such as accident involvement. Any additional sanctions, above the mandatory minimums, should be based on information about the specific offender, which should be provided in a presentence report available to the trial judge at the time of sentencing.
- ◇ **Restriction or Elimination of Charge Reduction.** Reduction of drunk driving charges to non-alcohol convictions, and the dismissal of charges under diversion or earned charge reduction programs, have an adverse effect on highway safety. Those practices result in the drunk driver receiving inappropriate sanctions and the lack of a driving record that would identify the risk that driver poses should he or she be rearrested. Therefore, plea negotiations that result in conviction of lesser, non-alcohol, charges are inappropriate. However, it must be recognized that plea negotiation has a legitimate function in the disposition of some drunk driving charges, such as when there is insufficient evidence of guilt, the plea negotiation would not change the defendant's sentence, or the plea negotiation is necessary to obtain the testimony of a material witness. Even

in those instances when a reduced charge is appropriate, the reasons for the plea negotiation should be placed on the record, and the alcohol involvement noted on the driver's record.

- ❖ **Improved Evidentiary Aids and Procedures.** A number of devices and procedures exist or have been proposed to improve the quality and efficiency of drunk driving arrests and to gather more persuasive evidence to use at trial. Those that the project found particularly useful in drunk driving cases include: (1) preservation of chemical test specimens to allow the defense to reanalyze them, (2) the adoption of calibration requirements to ensure accurate test results, and (3) legislation requiring police officers to advise drivers of their right to a second, independent analysis. Video taping of arrested drivers' behavior, and the use of gaze nystagmus to determine impairment, can likewise be beneficial in obtaining drunk driving convictions and should be used. However, in using video taping, particular care must be taken to ensure fairness. The use of preliminary breath testers is also supported by the project, although it must be remembered that the cost effectiveness of those devices has not yet been demonstrated. Therefore, they should be used only when the testing officer has probable cause to believe that the driver is under the influence of alcohol.
- ❖ **Required Chemical Testing of Drivers Involved in An Accident.** Current statutes add to the difficulty of proving guilt of aggravated drunk driving offenses such as manslaughter. State implied consent laws should therefore be amended, when necessary, to provide that a police officer may require a driver involved in a fatal accident to submit to a chemical test for intoxication if the officer has reasonable grounds to believe the driver was under the influence. Existing State laws should be amended, when necessary, to allow a police officer to test the driver, even if the driver objects to being tested, if the officer can satisfy all constitutional requirements relating to probable cause and a warrant, and uses only a reasonable amount of force to obtain the specimen.
- ❖ **Administrative Summary Suspension of the Driver's License.** A growing number of States have replaced the "traditional" practice of postconviction license suspension with an administrative system which results in swifter punishment for drunk drivers. This concept merits support, provided appropriate measures are taken to ensure due process of law and that the procedures in fact result in swift punishment for the guilty. To that end the following procedures are recommended:
 1. Immediate license seizure after a test refusal or failure;
 2. Issuance of a temporary receipt valid only until the administrative hearing process is completed;
 3. Steps to discourage delaying the administrative process;
 4. Enhanced penalties for subsequent test refusals or failures; and
 5. Provisions for limited licenses in cases of true hardship.
- ❖ **Separate Offense With Enhanced Penalties for Driving With A Revoked, Suspended, or Restricted License.** Convicted drunk drivers who continue to drive and, in many instances, drink and drive represent a major hazard to traffic safety. In many instances, current penalties for driving while under suspension are not severe enough to discourage suspended drivers. Therefore statutes should be enacted that will provide enhanced penalties for persons who drive in spite of an alcohol-related license suspension. The penalties should include a minimum fine and jail term comparable to those imposed for the first offense of drunk driving. There should also be an additional license suspension, equal to that imposed for the first offense of drunk driving. In addition, convictions for driving while the license is suspended or revoked should be considered as an aggravating factor in determining the sentence to be imposed if the offender is later convicted of this same offense, drunk driving, or another serious traffic offense.

- ◆ **Other Approaches and Programs.** A number of other approaches and programs merit consideration as a means of addressing the drunk driving problem. They include:
 - ◆ A continuing program of training and education to increase understanding of the nature of the drunk driving problem, and to promote awareness of actions being undertaken to reduce the magnitude of the problem;
 - ◆ Evaluation of programs—including legislation—aimed at drunk driving;
 - ◆ Using interstate driver records systems, such as the Driver License Compact and the National Driver Register, to identify license applicants whose licenses have been revoked, suspended, or restricted in other States;
 - ◆ Establishing a drug recognition experts program under which police officers are trained to administer a series of behavioral tests that identify impairment by drugs;
 - ◆ The preparation of presentence investigation reports for all drivers convicted of drunk driving to ensure that the most appropriate combination of sanctions is imposed;
 - ◆ The adoption of "open container" laws prohibiting the possession or consumption of alcoholic beverages in the passenger area of motor vehicles; and
 - ◆ The adoption of State laws and regulations requiring medical insurers and health maintenance organizations to cover treatment for alcohol and drug dependency.

An examination of the literature on drinking driving and consideration of the views of persons who deal with or are otherwise concerned with the problem, make apparent the inherent limitations of legal system approaches in reducing the incidence of alcohol-related traffic accidents. Claims that increased enforcement and tougher laws alone will have a significant impact on the problem must be viewed with skepticism. It must be remembered that all sanctions and enforcement techniques have limitations imposed by our system of laws and other practical considerations. In some cases certain measures are not feasible because of limitations in system resources and limitations in the willingness of the public to support the measures. However, the measures contained in this Report do hold the potential of having a positive effect on highway safety and will also improve the operation and fairness of the justice system's dealing with the problem.

Nevertheless, total reliance should not be placed on the justice system as a means of dealing with drunk driving. Other approaches, including the use of advanced technology and public information and education, should be employed to support and enhance legal approaches. Further, improvements in other components of the highway transportation system, including motor vehicles and the highway environment, should continue to be sought with increased vigor. A combination of sanctions and enforcement technique properly applied in conjunction with these improvements is the best hope for decreasing the overall traffic accident risk and that part of the risk caused by alcohol-impaired drivers.

REFERENCES

- MacDonald, J.D. & Wagner, L.L.M. (1981). *Report on a National Study of Preliminary Breath Test (PBT) and Illegal Per Se (IPS) Laws: Effectiveness of PBT and IPS Laws*. La Jolla, CA: Science Applications, Inc.
- Wolfe, A.C. & O'Day, J. (1984). *Evaluation Report on the 1979-83 Oakland County Alcohol Enforcement/Education Project*, Ann Arbor, MI: University of Michigan, Transportation Research Institute. University of Michigan Report Number UMTRI-84-32.

TRANSPORTATION COMMITTEE MEETING AGENDA

- 1) CALL MEETING TO ORDER
- 2) NOTE MONTH/DAY/YEAR TUESDAY, JANUARY 31, 1989
- 3) NOTE TIME:
- 4) NOTE MEMBERS PRESENT AND EXCUSED
 (For the record, note any late arrivals to the meeting)
- 5) RECOGNIZE VIP'S
- 6) REMIND PARTICIPANTS TO SIGN WITNESS REGISTER
- 7) ORDER OF BUSINESS:
 HB 26: "An act relating to motor vehicle forfeiture."

- 8) FOR THIS MEETING, EACH MEMBER HAS BEEN GIVEN:
 A Folder on HB 26:

ITEM #1: HB 26
 #2: FISCAL NOTE: PUBLIC SAFETY
 #3: FISCAL NOTE: DEPARTMENT OF ADMINISTRATION
 A: PUBLIC DEFENDER AGENCY
 B: OFFICE OF PUBLIC ADVOCACY
 #4: FISCAL NOTE: DEPARTMENT OF LAW
 #5: FISCAL NOTE: ALASKA COURT SYSTEM
 #6: DEPARTMENT OF CORRECTIONS
 #7: STATUTES
 #8: DEPARTMENT OF PUBLIC SAFETY
 STATISTICAL DATA
 #9: COMPARISON IN OTHER STATES
 #10: LEGAL ANALYSIS
 #11: STATISTICS
 #12: FISH AND GAME GUIDELINES
 #13: INFORMATIONAL ARTICLES

- 9) INTRODUCE WITNESSES

 For the record, ask witnesses to state their name, title,
 mailing address and the name of the firm or agency they
 represent.

 Ask witnesses with written testimony to submit it to the
 committee secretary.

- 10) THIS/NEXT WEEK'S COMMITTEE MEETING SCHEDULE:
 THURSDAY, FEBRUARY 2, 1989

- 11) ANNOUNCE TIME OF ADJOURNMENT

A M E N D M E N T

OFFERED IN THE HOUSE

BY KOPONEN

TO: HB 26

Page 4, line 13, after "department":

Insert "by:

(1) selling the motor vehicle; proceeds from the sale shall be deposited into the general fund;

(2) taking custody of the property and authorizing its use by the state or another political subdivision of the state; or

(3) destroying property that is harmful to the public"

HB 26 An Act relating to motor vehicle forfeiture.

- Public Safety
- Dept. of Administration
 - A) Public Defender Agency
 - B) Office of Public Advocacy
- Department of Law
- Alaska Court System
- Department of Corrections

(legislative Ref. Library,
Hans Transportation Comm,
Minto File 01/31/89, File #1)

8:35 meeting called to order.

Consensus goes

055 Rep Neil Gordon / Sponsor HB 26

leg. in Statutes to take car out. Few cases actually confiscated.

Import way of attacking drug problem.

104 Amendment CS Police can use vehicle, or crushed, if no need are not at Department F&G Forfeiture.

136 ~~Ed~~ Foster

Bush problem of airplanes, in Bush. Alcohol Hunting, gun, gun conspiracy.

Nobody confiscates cars, that kill people.

Agreed! 3 out 15 yrs been cars R&R ok

166 Hrd. Any Revenue that can be generated?

177 - Gordon

182 Hrd. Suggested that this be a fine table inserted into the bill to lose the State Instead of forfeiture vehicle

188 ~~Ed~~ Gordon - If vehicle is confiscated, shall responsible for report

202 - Cato now to be ^{CS} adopted

206 - Hyl now Amend #7

210 Cato

211 Adopted cl's #7.

Cato -

236 Hudson fragment like, Bank.

245 Gled. ~~to~~ to Court and recover CAR. mostly new CAs
Fighting
leading agent.

274 Leann. Sue State

281 Copeland ^{Leahell} ~~to~~ Sale within 3 month period.
Right of Remission.

295 Foster -

303 Leann - Concern on Fiscal Note head of economic fiscal

336 - Most possible Expense Fiscal Note.

346 - ^{Comment} Legal Fiscal Note - H.K. Court System

365 - Hudson - Pg. 4 line 16 - Heta facti recta Vehicle.

373 - Copeland

384 Cato

400 Hedson.

Cato ^{Hedson} Suggest Amendment.

418 Hed - Staff duty, would not have as is
as long as current Statutes cover.

433 -

441 Hed.

#472 Cato. Ref to the Statutes.
to Assue.

483 Wendy Miller - before her very day

487 - Hedson paper p. 4 L16 ^{After the word notice} _{upl}
with ... day

* 496 per respect
any objections

#498 Lem Object with purpose of discussion
Concerned with set of State Vehicles, know who
lem holder is.

#500 Hedson - protect 3rd party Financing car. Act
to protect State.

526 Cato. Agreed with Rep Hed.

533 Foster - Joyriding. take my car.
Rental not needed

546 - Helson -

550 Copland

560 Cato - Allowed to use car. allow sue or
who's car take as a rental car.

570 Copland

574 Foster - Counsel that Capt Gray would show
up as South West.

576 - Wash. D.C. go through procedure to get
vehicle back, car will be seized. The
lien holder pass ownership to get vehicle
back.

630

Side B.

060 Case of Lisensol. That by Dist office
like you get car. suits Raters
own protection for taking vehicle. Case Raters

069

071 Foster - joint owner in plane, and one partner
gets Dist. Her name this effect liability
of other people on the partners.

Cat 115

170 Foster

126 Hudson

140. Foster - Auto Vehicle only?

147 Calo - Definition of motor vehicle

150 Copeland - definitions of motor vehicle as ~~used in~~ ^{disputed}

Statutes 50^c 20-10.421

28 40 100

241 Calo - Any other incidents South.

Do cancelled except.

248 Foster - Boats as Airplanes ^{Calo} NO Recommendation

256 Hudson -

305 Foster -

308 Calo -

320 Copeland

325 Hudson - **P.H.** (16 added to Annual) of HB 26.

Verifiably on a timely basis

330 Foster - length of time before leaving to get vehicle fixed.

345 Calo

362 - Copeland -

380 - Foster

395 Helms Amendment to H.R. 26
P. 4 line 29. "cuts to shall be made in a timely manner"

* 404 Amel #2
P. 4 line 29 "in a timely manner"

* 407 Cato "

Any obj:

Amel Excepted

420 -

Objected for the purpose of discussion.

426 - Helms propose More H.R. 26
as Amendment CS out with
industrial foundations.

by Cato with all Fiscal notes ^{HHS Dept} Public Safety
3000 per third DUT'S

435 Helms not in position to modify,
more out with all Amendments and other

* 443 - Cato

445 Lamm

* 455 - Cato

464 - Helms

* 477 Helms Request re Fiscal Notes

* 480 Cato

485 Lamm

* 491

499 - Foster - Concerned about Commercial operation
Ad facilities.

* 519

*

10:00

520

8.35

Cato
Foster,
Leman
Hudson

Jan 31

HB 26

Rep Kopero

Follows up on legislation in
statute now that allows court to
take car of person convicted of D.W.I.
It's a law that has no teeth.
Only knows of one case where
vehicle has been forfeited.

Feels it is important way of
getting at D.W.I.

Opposition in previous years has come
from banks + people who own vehicle.
This may lead to a lot of litigation.
Offers amendment to clear up this
problem.

1. Car sell vehicle
2. Police can use as mounted vehicle
3. Wreck vehicle if no other use

FT A forfeiture of weapons, flares
+ vehicle has not lead to increased
costs of litigation

Foster

in bush
Watch over years aeroplanes
confiscated for transporting alcohol.
Watch hunter loose guns + weapons

It is argued that nobody has
looked at confiscating vehicles as
vehicles kill people
How long a period can the
person get the 3 D.W.I.

M.10 - 15 years.

Bill.

Has ~~anybody~~ any of the fiscal
note providers looked + the
revenue that might be provided
as a result of selling vehicle

M.10

No - that's why amendment
has been offered.

Bill

Surprised fiscal note so high.

The amendment + bill protect
the third party owner - bad etc

Amend

Cato

Motion to move amendment

Bill

Moved amendment #1

Cab

any objections

None

Amendment #1 has been adopted.

Cato

Briefly described legal language

Bill

How does it work if I buy
+ car + still owe over $\frac{1}{2}$
the payments on it. How is
the lender protected.

Milo

The legal owner - lender
may go to court + recover
the car.

Bill

Who would have first rights,
state or lender

Milo

State would have first rights
but if the lender goes to
court + proves legal ownership
they can recover car

Leamon

Does lender have to
sue the state of Alaska
to get car back

Nilo

holder must go to court
within 90 days to be clear
to recover vehicle

~~Text~~

})))

hemar

- Trend of seeing erroneous
fiscal notes.

Cato

Also trend of seeing it.
The dept has submitted erroneous
fiscal notes for years
this bill is not the first time
this has happened

hemar

- Asked if Nilo was in agreement
with the high fiscal notes

Nilo

{ Feels the notes reflects the
maximum number of issues
expand

Bill Hudson

Page 4 - line 16 regarding
action for forfeiture of vehicle

Would it be wise to put a
timetable on the length of time
state has to notify holder
of the forfeiture

Hilo

Administrative Code defines a
timetable in cases like this
there is a 2 weeks notice requirement.
the holder has 90 days
to apply for

Bill

that makes it even more
important that the state
notify the holder in a
timely manner.

Hudson directed staff to
investigate the Administrative
Code to see if the provision
is outlined

Staff

Telephoned Mike Ford re
legal services

Mike Ford

Hudson

Page 4 line 16.
~~insert~~ - after word written notice
"insert" with 30 days

Cato

any objections

Leman

Objects for purposes of discussions

Leman

Feels state may not always
be able to determine who
the shareholders are with the
30 day period.

Hudson

Feels the amendment ~~who~~ would
protect shareholder but would
not preclude state continuing
to notify shareholders after
the 30 day period.
Feels this just sends message
to state that the notification ^{to} shareholders
be given in a timely manner.

Hudson

With vehicle forfeiture -
if a person gets apprehended
on 3rd DWI - is the
vehicle forfeited regardless of
ownership or is it

Hudson

Page 150 of statutes
Sec 28.35.036

~~The state shall provide
timely verbal notice +
written notice within 30
days~~

Rep. Hulsa

Page 4 line 29

Amendment #3

after word bearing

insert "in a timely manner"

Objections

- None

Amendment #3 has passed

Any objections to amend

#2

None

So order

None

Hulsa

Made CS/HB 26
with individual ~~fiscal notes~~
recommendations

Let's

Hulsa

Finance committee can
sort out fiscal notes

pass out

with amendments with
attachment

request new fiscal

notes for next

committee of 10 ferrak

Find provision in statute

to address port ownership

HB

39

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY
LEGISLATIVE REFERENCE LIBRARY

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS database CMPR. In order to save space copies of minutes have not been left in the files.

Mary Van Nimwegen

House Transportation

2/14/89

(5)

Date Referred: January 9, 1989

FURTHER REFERRALS: C&RA
FINANCE

Date of Committee Action: 2/14/89

The TRANSPORTATION Committee recommends that:

HOUSE BILL NO. 39 [AID TO MUNICIPALITIES FOR ROADS]
"An Act relating to state aid to municipalities for roads and frozen waterways; and providing for an effective date."

[] be replaced with CS HB 29 Transportation [] the same title
[] a new title

[] have attached amendment(s)

- [] do pass
- [] do not pass
- [] no recommendation
- [] individual recommendations
- [] additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):

- [] fiscal impact
- [] zero fiscal note
- [] zero with analysis

APPROVES PREVIOUS:

- [] fiscal note(s) published: _____
- [] zero fiscal notes(s) published: _____

SIGNING DO PASS:

Bill Hulse
Bette Cuthbert
Richard Lake
Gregg Adamson
Jan S. Anderson

SIGNING OTHER THAN DO PASS:
(Do Not Pass, No Recommendation, Amend)

Bette Cuthbert
 Chairman's signature

FEBRUARY 14, 1989

COMMITTEE CALENDAR

HB 39: "An Act relating to state aid to municipalities for roads and frozen waterways; and providing for an effective date."

FOR THIS MEETING, YOU HAVE BEEN GIVEN:

Folder 1: House Bill 39

- ITEM #1: HB 39
- #2: C/S for HB 39
- #3: Fiscal Note: Dept. of Community & Regional Affairs
- #4: Position Paper: Dept. of Community & Regional Affairs
- #5: House Research Paper
- #6: Analysis
- #7: Statutes

15-44

6-0136E.

Cook
2/8/89

Original sponsor: Miller

1 IN THE HOUSE

2 CS FOR HOUSE BILL NO. 39 (Jensen)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to state aid to municipalities for
7 roads; and providing for an effective date."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 * Section 1. AS 29.60.110(a) is amended to read:

10 (a) The department shall pay to a municipality that has power to
11 provide for road maintenance and exercises that power, \$2,500 a mile
12 for each mile of road, street, or highway maintained by the municipal-
13 ity, excluding (1) the official state highway system, (2) roads,
14 streets, or highways not dedicated to public use, (3) roads, streets,
15 or highways maintained under the local service road program (AS 19.-
16 30.111 - 19.30.25!), and (4) alleyways, in accordance with regulations
17 adopted by the Department of Transportation and Public Facilities. A
18 payment may not be made under this subsection for maintenance of a
19 road that is not used by automotive equipment. Money received by a
20 municipality under this section may be used only for construction or
21 maintenance of roads. No more than 10 percent of the money received
22 may be used for administrative costs incurred in connection with the
23 construction or maintenance, including costs of bidding, contracting,
24 and project oversight.

25 * Sec. 2. This Act takes effect July 1, 1989.

FISCAL NOTE

REQUEST: _____

Revisio: Date: _____ Agency Affected: Community & Regional Affairs
 Title: "An Act..state aid to municipalities for roads.." BRU: _____
 Sponsor: Miller Components: _____
 Requestor: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Jim Plasman, Deputy Director Phone: 465-4750
 Division: Municipal & Regional Assistance Date: 2/13/89
 Approved by Commissioner: [Signature] Date: 13 Feb 89
 Agency: Community & Regional Affairs

Distribution (by preparer):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

DEPT. OF COMMUNITY & REGIONAL AFFAIRS

OFFICE OF THE COMMISSIONER

- P.O. BOX B
JUNEAU, ALASKA 99811-2100
PHONE: (907) 465-4700
- 949 E. 36TH AVENUE, SUITE 400
ANCHORAGE, ALASKA 99508-4302
PHONE: (907) 563-1073

February 13, 1989

POSITION PAPER

RE: House Bill 39

SPONSOR: Representative Miller

Program Effects of Bill:

This bill would require a municipality that receives State Revenue Sharing funds for maintenance of public roads, to use the monies received for construction or maintenance of the roads. Further, the bill would limit administrative costs incurred in providing road maintenance to 10 percent of the amount of money received.

Comments:

Under current program regulations (19 AAC 30.052), a municipality must agree to spend at least 20 percent of the amount received (including the COLA), on road maintenance and the remainder for a public purpose. The department is concerned with the impact this bill may have on municipalities, especially smaller municipalities, that depend upon these funds to provide other local government services that have a higher priority in the community.

Secondly, this bill does not address whether the area cost-of-living differential (COLA) funds received by a municipality under AS 29.60.160 on the basis of miles of road under AS 29.60.110 are subject to the provisions of HB 39. If it is the intent to include the COLA funds, this may be accomplished by adding the following language beginning at line 19 of the proposed committee substitute:

Money received by a municipality for roads under this section and AS 29.60.160 may be used only for construction or maintenance of roads.

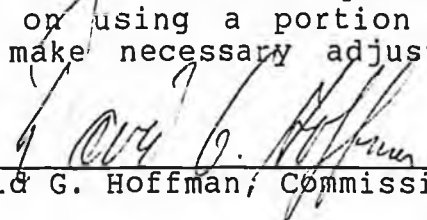
The bill provides for a limitation of administrative costs; however, "administrative costs" are not clearly defined. This may present a problem with monitoring or auditing those costs.

House Bill 39
February 13, 1989
Page Two

Current language in the statute speaks to maintenance of roads. This is reflected in the basis of payment, which is existing miles of road that meet standards established by DOT/PF. Under the proposed language, funds received under this section could also be directed toward construction of new roads. This raises the question of whether a new basis of payment should be considered, such as including miles of road under construction.

It should also be noted that this bill addresses only funds received for maintenance of public roads and not ice roads. By not including ice roads, this bill would create two different levels of program requirements and service delivery.

The final concern the department has with this bill is the effective date of July 1, 1989. Municipalities are currently in the process of planning their budgets for FY 90. An effective date of July 1, 1989 does not allow adequate time for those municipalities that plan on using a portion of these funds for other priorities to make necessary adjustments to their budgets.



David G. Hoffman, Commissioner



ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

P.O. Box Y, State Capitol
Juneau, Alaska 99811-3100
Mail Stop 3100
(907) 465-3991

October 25, 1988

MEMORANDUM

TO: Representative Mike Miller

ATTN: Gene Therriault

FROM: Karen Oakley *KO*
Legislative Analyst

RE: State Aid to Municipalities for Roads: Administrative Costs of
Boroughs with Road Service Areas
Research Request 89.071

You asked how many municipalities receive revenue sharing moneys from the state for roads under AS 29.60.110 (State Aid to Municipalities for Roads). For those boroughs which have road service areas, you asked how much of the revenue sharing moneys is passed through to the service area and how much is retained by the borough for administration.

In summary, we found that the four boroughs that provide for road maintenance through road service areas charge from \$0 to \$500 per mile for the administrative and contract management services they perform on behalf of the service areas. Road service areas receive revenue from local taxes as well as the state revenue sharing program, and administrative charges are not paid solely from the revenue sharing moneys. Thus, the percentage of state funds spent for administration cannot be precisely determined.

Background

A borough assembly may establish by ordinance service areas in which special services will be provided. Special services include those services not provided on an areawide or nonareawide basis within the borough or a higher or different level of service than that provided on an areawide or nonareawide basis. The assembly may provide for an elected or appointed board to supervise the provision of the special services, and the assembly may authorize the levying of taxes, charges or assessments in a service area to provide the special services.

The power to maintain roads is an "additional power," which municipalities may choose to acquire. Boroughs which acquire road maintenance powers may elect to exercise that power on an areawide, nonareawide (outside cities) or a service area basis. Of Alaska's 13 boroughs, four provide for road maintenance through service areas. These boroughs are: Municipality of Anchorage, Fairbanks North Star Borough, Kodiak Island Borough, and Matanuska-Susitna Borough.

Revenue Sharing for Roads

Under AS 29.60.110, the state annually pays municipalities that have and exercise the power to maintain roads \$2,500 per mile for each mile of road maintained by the municipality. In recent years, the total amount appropriated to the road maintenance fund has been insufficient to provide \$2,500 per mile to all eligible municipalities, and the amounts have been prorated. In FY 88, municipalities received an average of \$1,544 per mile.

In FY 88, 129 municipalities received moneys for road maintenance under AS 29.60.110. Attachment A lists these municipalities and the amounts received for roads in FY 88. A total of \$6.5 million was disbursed.

Under regulations adopted by the the Department of Community and Regional Affairs (DCRA), municipalities applying to receive funds under AS 29.60.110 must meet certain standards, including the following:

- If the municipality is a city or a borough that does not have road service areas, the municipality must agree to spend at least 20 percent of the moneys on road maintenance; the remaining moneys may be spent for any public purpose.
- If the municipality is a borough that provides road maintenance through road service areas, the borough must agree to allocate the entire amount received for road maintenance within a road service area to the road service area.¹

The regulation treats boroughs with road service areas differently than boroughs without road service areas, however, there has been some confusion about this point even within the DCRA. The current application form that municipalities must complete to receive revenue sharing for roads requires boroughs to agree to spend at least 20 percent of the money for road maintenance. According to Pauline Valaha, Program Manager for Revenue Sharing and Municipal Assistance, the application form will have to be changed to make it clear that boroughs with road service areas must pass all of the money on to the road service area.

* 11750 /
¹The regulation is 19 AAC 30.052 and is found in Attachment B.

Boroughs With Road Service Areas:

Table 1 presents relevant information about the four boroughs which provide for road maintenance through service areas. Below, the means by which the road service areas are administered in each borough are described.

Municipality of Anchorage. According to Jim Turner, Public Works Department, the Municipality of Anchorage has 15 road service areas. Most are limited service areas, and voters in each area must approve the continuation of the service area once every three years. State revenue sharing funds for road maintenance generally represent from 15 to 25 percent of each road service area's budget; the remainder is raised through property taxation. Most service areas levy a 1 to 1.5 mill tax for road maintenance.

By ordinance, the public works department, which provides all financial and contract management services to the road service areas, may not charge more than ten percent of a service area's total budget for administration. In general, the public works department retains between six to nine percent. On a per mile basis, administrative costs can be as high as \$500 per mile.

Fairbanks North Star Borough. According to Peggy Martin, Manager of the Rural Services Division, the Fairbanks North Star Borough currently has about 345 miles of public roads maintained through its 95 road service areas.² A total of 400 volunteers serve on the boards which manage the road service areas. Each year, each board submits a budget and a maintenance plan to the assembly, and the assembly appropriates money to each road service area. In general, the assembly appropriates the amount the road service area should receive under the state revenue sharing program and any additional amount requested by the service area to be raised through taxation of the service area residents.

²The Fairbanks North Star Borough also has from 900 to 1,200 miles of road not maintained by the city, borough or the state.

TABLE 1
 BOROUGH WITH ROAD SERVICE AREAS: GENERAL INFORMATION

BOROUGH	MILES OF ROAD MAINTAINED	NUMBER OF ROAD SERVICE AREAS	NUMBER OF RSA SUPERVISORS	FY 88 REVENUE SHARING FOR ROADS	AMOUNT RETAINED FOR ADMINISTRATION
MUNICIPALITY OF ANCHORAGE	792.51	15	60+	\$1,100,002	by municipal ordinance not more than 10 percent of total service area budget (taxes plus revenue sharing)
FAIRBANKS NORTH STAR BOROUGH	334.83	95	400	538,498	by municipal ordinance \$500 per mile
KODIAK ISLAND BOROUGH	20.48	4	28+	30,595	none, but road service area does not receive interest earned on money in their account
MATANUSKA-SUSITNA BOROUGH	933.64	17	50-85	1,344,487	\$226,000 for road services department; not charged for financial services

Sources: Department of Community and Regional Affairs and the individual boroughs.

Prepared by the House Research Agency, October 1988 (89.071).

While the service area boards set the priorities for expenditure of the money, the administration of the money, i.e., paying the bills and preparing the annual audit required by DCRA, is handled by the Rural Services Division. For these services, the Rural Services Division charges a fee of \$500 per mile. The fee is required under an ordinance adopted by the borough assembly. In 1986, Mayor Juanita Helms requested that the assembly amend the ordinance to have the fee levied on a percentage basis. Because revenue sharing moneys from the state were being reduced, the set fee resulted in the road service areas paying up to 40 percent of their revenue sharing money to the borough for the administrative services rendered by the Rural Services Division. The borough assembly, however, did not amend the ordinance.

copy sent to Miller 10/25/88

Kodiak Island Borough. The Kodiak Island Borough passes 100 percent of the revenue sharing moneys received from the state for road maintenance on to its four road service areas. However, the borough does not pay interest earned on the money received from the state to the road service area. Any interest earnings are retained by the borough to offset the costs of providing financial and contract management services to the road service areas.

Matanuska-Susitna Borough. According to Allen Cigartson, Chief, Road Services, the Mat-Su Borough has 17 road service areas which currently provide maintenance for about 930 miles of public road. Each road service area board is supposed to have from three to five members, but there are many vacancies, because there have been so few volunteers. The road services department supervises the work of the contractors hired by the road service areas.

Part of the road services department budget is taken from the revenue sharing moneys received from the state. Approximately \$226,000, or 17 percent, of the \$1.3 million revenue sharing moneys are allocated to the road services department. On a per mile basis, the road services department costs \$242 per mile. The remaining moneys are passed on to the road service areas. The borough finance department performs all financial services needed by the road service areas, but the service areas are not charged directly for those services.

I hope you find this information useful. If you need additional information, please let us know.

Attachments

ATTACHMENT A
DCRA MISCELLANEOUS INFORMATION REPORT, FY 88

DEPARTMENT OF COMMUNITY & REGIONAL AFFAIRS
MISCELLANEOUS INFORMATION REPORT

MAR 01, 1988

FY 88

KEY	DCRA PLACE NAME	PUB ROAD MILES	ICE ROAD MILES	REG HOSP	LRGE HOSP	HOSP BEDS	HLTH FAC	H F BEDS	Public Roads	ICE Roads	Totals
									#	#	#
12004099	AKHIQ	3.10	0.00	0	0	0	0	0	4,631	0	4,631
11203099	AKIACHAK (missing)	0.00	0.00	0	0	0	0	0	0	0	0
11204099	AKIAK	1.30	0.00	0	0	0	1	C	2,422	0	2,422
11701099	AKUTAN	0.00	0.00	0	0	0	0	0	0	0	0
11102099	ALAKANUK	4.00	22.50	0	0	0	1	0	7,453	25,155	32,608
11402099	ALEKNAGIK	7.00	8.50	0	0	0	1	0	12,571	9,159	21,730
11733099	ALEUTIANS EAST BOROUGH (missing)	0.00	0.00	0	0	0	0	0	0	0	0
10502099	ALLAKAKET	5.20	0.00	0	0	0	0	0	10,052	0	10,052
10201099	AMBLER	5.22	0.00	0	0	0	1	0	10,091	0	10,091
10101099	ANAKTUVUK PASS	0.00	0.00	0	0	0	0	0	0	0	0
10701099	ANDERSON	8.72	0.00	0	0	0	1	C	7,459	0	7,459
12601099	ANGOON	5.18	0.00	0	0	0	1	C	7,459	0	7,459
11301099	ANIAK	17.76	24.00	0	0	0	3	0	34,333	27,838	62,171
10401099	ANVIK	6.75	0.00	0	0	0	0	0	13,044	0	13,044
11209099	ATMAUTLUAK (missing)	0.15	0.00	0	0	0	1	0	0	0	0
10102099	ATQASUK	0.00	0.00	0	0	0	0	0	0	0	0
10103099	BARROW	0.00	0.00	0	0	0	0	0	0	0	0
11210099	BETHEL	15.76	27.70	0	0	0	2	0	29,367	30,964	60,331
10506099	BETTLES	0.00	30.00	0	0	0	0	0	0	34,797	34,797
10306099	BREVIQ MISSION	0.00	0.00	0	0	0	1	0	0	0	0
11600099	BRISTOL BAY BOROUGH	12.50	0.00	0	0	0	1	0	22,449	0	22,449
10203099	BUCKLAND	2.50	44.50	0	0	0	1	0	4,853	51,616	56,469
11217099	CHEFORNAK	0.00	0.00	0	0	0	1	0	0	0	0
11109099	CHEVAK	3.09	0.00	0	0	0	1	0	5,757	0	5,757
11501299	CHIGNIK	1.47	0.00	0	0	0	1	0	2,640	0	2,640
11302099	CHUATHBALUK	4.00	6.00	0	0	0	1	0	7,732	6,959	14,691
12800099	CITY AND BOROUGH OF JUNEAU	85.85	0.00	0	2	0	0	153	119,159	0	119,159
12900099	CITY AND BOROUGH OF SITKA	20.56	0.00	0	1	0	2	36	29,607	0	29,607
11407099	CLARK'S POINT	1.75	0.00	0	0	0	1	0	3,142	0	3,142
11715099	COLD BAY	0.00	0.00	0	0	0	0	6	0	0	0
12408099	CORDOVA	9.35	0.00	0	1	0	3	0	15,037	0	15,037
13215099	CRAIG	6.00	0.00	0	0	0	4	0	8,452	0	8,452
10207099	DEERING	3.00	56.00	0	0	0	1	0	5,799	64,955	70,754
10803099	DELTA JUNCTION	27.42	0.00	0	0	0	0	0	44,098	0	44,098
11408099	DILLINGHAM	11.48	0.00	0	0	0	1	0	20,617	0	20,617
10315099	DIOMEDE	0.00	0.00	0	0	0	0	0	0	0	0
10906099	EAGLE	4.84	0.00	0	0	0	1	0	7,784	0	7,784
11221099	EEL	1.17	0.00	0	0	0	1	C	2,130	0	2,130
		4.50	0.00	0	0	0	1	C	8,081	0	8,081

DEPARTMENT OF COMMUNITY & REGIONAL AFFAIRS
MISCELLANEOUS INFORMATION REPORT

KEY	DCRA PLACE NAME	PUB ROAD MILES	ICE ROAD MILES	REG HOSP	LRGE HOSP	HOSP BEDS	HLTH FAC	H F BEDS	Public Ronds	ICE Ronds	Total
C317099	ELIM	11.30	0.00	0	0	0	1	0	21,845	0	21,845
1111099	EMMONAK	3.38	7.00	0	0	0	1	9	6,248	7.826	14,124
1025099	FAIRBANKS	93.37	0.00	0	1	0	3	232	150,164	0	150,164
1000099	FAIRBANKS NORTH STAR BOPOUGH	334.83	0.00	0	0	0	0	0	538,498	0	538,498
0615099	FORT YUKON	17.56	0.00	0	0	0	0	0	33,947	0	33,947
10519099	GALENA	7.10	0.00	0	0	0	4	0	13,725	0	13,725
10319099	GAMBELL	4.00	0.00	0	0	0	1	0	7,732	0	7,732
10320099	GOLOVIN	2.10	15.00	0	0	0	1	0	4,059	17,398	21,457
11222099	GOODNEWS BAY	2.86	0.00	0	0	0	1	0	5,329	0	5,329
10407099	GRAYLING	7.00	0.00	0	0	0	1	0	13,532	0	13,532
12704099	HAINES	10.74	0.00	0	0	0	2	0	16,046	0	16,046
12700099	HAINES BOROUGH	1.90	0.00	0	0	0	0	0	2,838	0	2,838
10409099	HOLY CROSS	13.13	0.00	0	0	0	1	0	25,382	0	25,382
12122099	HOMER	20.30	0.00	0	0	0	6	0	30,329	0	30,329
12618099	HCCNAH	14.00	0.00	0	0	0	1	0	20,916	0	20,916
11115099	HOOPER BAY	0.00	0.00	0	0	0	0	0	0	0	0
12331099	HOUSTON	38.63	0.00	0	0	0	0	0	55,629	0	55,629
10523099	HUGHES	5.75	0.00	0	0	0	1	0	11,115	0	11,115
10524099	HUSLIA	18.18	0.00	0	0	0	1	0	35,145	0	35,145
13236099	HYDABURG	3.17	0.00	0	0	0	0	0	4,399	0	4,399
12127099	KACHEMAK	0.00	0.00	0	0	0	0	0	0	0	0
13239099	KAKE	6.90	0.00	0	0	0	1	0	9,936	0	9,936
10117099	KAKTOVIK	0.00	0.00	0	0	0	0	0	0	0	0
10530099	KALTAG	3.17	0.00	0	0	0	1	0	15,794	0	15,794
13242099	KASAAN	2.92	0.00	0	0	0	1	0	4,052	0	4,052
11224099	KASIGLUK (missing)	0.26	0.00	0	0	0	1	0	0	0	0
12130099	KENAI	57.30	0.00	0	0	0	2	30	85,608	0	85,608
12100099	KENAI PENINSULA BOROUGH	588.66	0.00	0	2	0	0	0	879,480	0	879,480
13013099	KETCHIKAN	20.19	0.00	0	1	0	2	37	28,023	0	28,023
13000099	KETCHIKAN GATEWAY BOROUGH	0.00	0.00	0	0	0	0	0	0	0	0
10212099	KIANA	2.72	25.00	0	0	0	1	0	5,258	28,998	34,256
11724099	KING COVE	5.40	0.00	0	0	0	1	0	9,698	0	9,698
10213099	KIVALINA	0.00	12.00	0	0	0	1	0	0	13,919	13,919
13246099	KLAWOCK	4.80	0.00	0	0	0	2	0	6,662	0	6,662
10216099	KOBIK	4.21	9.40	0	0	0	1	0	8,138	10,903	19,041
12022099	KODIAK	15.43	0.00	0	0	0	0	0	23,053	0	23,053
12000099	KODIAK ISLAND BOROUGH	20.49	0.00	0	1	0	8	70	30,595	0	30,595
11121099	KOTLIK	0.00	0.00	0	0	0	1	0	0	0	0
		25.52	73.00	0	0	0	0	0	249,335	84,674	334,009

334.83
+500
167,415

DEPARTMENT OF COMMUNITY & REGIONAL AFFAIRS
MISCELLANEOUS INFORMATION REPORT

KEY	DCRA PLACE NAME	PUB ROAD MILES	ICE ROAD MILES	REG HOSP	LRGE HOSP	HOSP BEDS	HLTH FAC	H BEGS	F Public Roads	ICE Roads	Totals
0328099	KOYUK	4.26	0.00	0	0	C	1	0	8,235	⊕	8,235
0533099	KOYUKUK	3.50	0.00	0	0	0	1	0	6,766	⊕	6,766
3247099	KUPREANOF	0.00	0.00	0	0	0	C	0	⊕	⊕	⊕
1232099	KWETHLUX	0.98	0.00	0	0	0	1	0	1,826	⊕	1,826
2028099	LARSEN BAY	0.00	0.00	0	0	0	C	0	⊕	⊕	⊕
1307099	LOWER KALSKAG	1.07	40.00	0	0	0	1	0	2,068	46,396	48,464
1423099	MANCKOTAK	0.43	0.00	0	0	0	1	C	772	⊕	772
1126099	MARSHALL	5.00	0.00	0	0	0	1	0	9,316	⊕	9,316
2300099	MATANUSKA-SUSITNA BOROUGH	933.64	0.00	0	0	0	0	49,344	487	⊕	1,344,487
0413099	MCGRATH	13.52	0.00	0	0	0	2	0	26,136	⊕	26,136
1237099	MEKORYUK	3.30	0.00	0	0	C	1	0	6,149	⊕	6,149
1127099	MOUNTAIN VILLAGE	21.50	0.00	0	0	0	1	0	40,062	⊕	40,062
2203099	MUNICIPALITY OF ANCHORAGE	792.51	0.00	0	0	303	14	753,100	1,002	⊕	1,100,002
1241099	NAPAKIAK	4.70	20.30	0	0	0	1	0	8,757	22,696	31,453
1242099	NAPASKIAK	0.00	0.00	0	0	0	1	C	⊕	⊕	⊕
0540099	NENANA	22.93	0.00	0	0	0	0	0	42,727	⊕	42,727
1425099	NEW STUYAHCK	2.50	0.00	0	0	C	1	0	4,499	⊕	4,499
1520099	NEWHALEN	1.55	0.00	0	0	C	1	0	2,783	⊕	2,783
1247099	NEWTOK	0.00	0.00	0	0	0	1	0	⊕	⊕	⊕
1248099	NIGHTMUTE	0.00	0.00	0	0	C	1	0	⊕	⊕	⊕
0416099	NIKOLAI	3.50	0.00	0	0	0	0	0	7,539	⊕	7,539
0333099	NOME	16.83	0.00	0	1	0	2	59	32,535	⊕	32,535
1521099	NONDALTON	7.00	1.50	0	0	0	1	0	12,571	1,616	14,187
0221099	NOORVIK	7.20	40.00	0	0	C	1	0	13,919	46,396	60,315
1049099	NORTH POLE	13.27	0.00	0	0	C	C	0	21,341	⊕	21,341
0100099	NORTH SLOPE BOROUGH	50.92	12.00	0	0	0	13	0	156,434	13,919	170,353
0217199	NORTHWEST ARCTIC BOROUGH	64.09	142.38	0	0	C	1	0	123,899	165,149	289,048
0121099	NUIQSUT	0.00	0.00	0	0	0	0	C	⊕	⊕	⊕
03545099	NULATO	10.26	0.50	0	0	0	1	0	19,834	579	20,413
1251099	NUNAPITCHUK	0.00	67.75	0	0	0	1	0	⊕	75,746	75,746
03035099	OLD HARBOR	5.02	0.00	0	0	0	0	0	7,500	⊕	7,500
02037099	OUZINKIE	3.10	0.00	0	0	0	0	0	4,631	⊕	4,631
02351099	PALMER	25.69	0.00	0	1	C	0	20	36,994	⊕	36,994
02625099	PELICAN	1.10	0.00	0	0	0	1	0	1,643	⊕	1,643
023255099	PETERSBURG	11.49	0.00	0	1	0	3	0	16,546	⊕	16,546
01134099	PILOT STATION	2.09	0.00	0	0	0	1	0	3,894	⊕	3,894
01256099	PLATINUM	6.00	0.00	0	0	C	1	0	11,180	⊕	11,180
01124099	POINT HOPE	0.00	0.00	0	0	0	0	0	⊕	⊕	⊕

DEPARTMENT OF COMMUNITY & REGIONAL AFFAIRS
MISCELLANEOUS INFORMATION REPORT

KEY	DCRA PLACE NAME	PUR ROAD MILES	ICE ROAD MILES	REG HOSP	LRGE HOSP	HOSP BEDS	HLTH FAC	H F BEDS	Public ROADS	ICE Roads	Totals
11519099	PORT HEIDEN	27.40	0.00	0	0	0	1	0	49,208	0	49,208
12041099	PORT LIONS	4.29	0.00	0	0	0	0	0	6,409	0	6,409
11255099	QUINHAGAK	2.59	0.00	0	0	0	1	0	4,826	0	4,826
10549099	RUBY	0.00	0.00	0	0	0	0	0	0	0	0
11136099	RUSSIAN MISSION	1.64	0.00	0	0	0	1	0	3,055	0	3,055
11802099	SAINT GEORGE	16.28	0.00	0	0	0	1	0	29,237	0	29,237
11103099	SAINT MARY'S	8.68	0.00	0	0	0	1	0	16,174	0	16,174
10350099	SAINT MICHAEL	7.82	0.00	0	0	0	1	0	7,384	0	7,384
11303099	SAINT PAUL	41.17	0.00	0	0	0	0	0	73,938	0	73,938
11737099	SAND POINT	10.41	0.00	0	0	0	1	0	18,695	0	18,695
10352099	SAVOONGA	6.10	0.00	0	0	0	0	0	11,792	0	11,792
13030099	SAXMAN	4.02	0.00	0	0	0	0	0	5,579	0	5,579
11137099	SCAMMON BAY	1.68	0.00	0	0	0	1	0	3,130	0	3,130
10222099	SELAWIK	3.00	54.00	0	0	0	1	0	5,799	62,635	68,434
12163099	SELDOVIA	6.30	0.00	0	0	0	1	0	9,412	0	9,412
12164099	SEWARD	19.03	0.00	0	1	0	2	0	628,476	0	28,476
10420099	SHAGELUK	6.64	0.00	0	0	0	1	0	12,836	0	12,836
10354099	SHAKTOOLIK	3.50	0.00	0	0	0	1	0	6,766	0	6,766
11133099	SHELDON POINT	0.00	0.00	0	0	0	1	0	0	0	0
10356099	SHISHMAREF	2.13	0.00	0	0	0	0	0	4,117	0	4,117
10224099	SHUNGNAK	1.75	0.00	0	0	0	1	0	3,353	0	3,353
13102099	SKAGWAY	11.15	0.00	0	0	0	1	0	16,658	0	16,658
12168099	SOLDOTNA	36.34	0.00	0	0	0	1	0	455,293	0	54,293
10360099	STEBBINS	4.75	4.00	0	0	0	1	0	9,182	4,639	13,821
10551099	TANANA	29.50	0.00	0	0	0	1	0	57,029	0	57,029
10363099	TELLER	2.69	0.00	0	0	0	1	0	5,200	0	5,200
12635099	TENAKEE SPRINGS	0.00	0.00	0	0	0	0	0	0	0	0
13278099	THORNE BAY	22.70	0.00	0	0	0	1	0	31,507	0	31,507
11440099	TOGIK	7.87	0.00	0	0	0	1	0	14,133	0	14,133
11262099	TOKSOOK BAY	2.00	0.00	0	0	0	1	0	3,726	0	3,726
11263099	TULUKSAK	12.00	43.00	0	0	0	1	0	22,360	48,075	70,435
1265099	TUNUNAK	2.50	0.00	0	0	0	1	0	4,658	0	4,658
10365099	UNALAKLEET	9.52	0.00	0	0	0	1	0	18,404	0	18,404
1746099	UNALASKA	39.42	0.00	0	0	0	3	0	68,999	0	68,999
1309099	UPPER KALSKAG	1.50	16.50	0	0	0	1	0	2,899	19,138	22,037
2456099	VALDEZ	22.65	0.00	0	1	0	1	0	37,791	0	37,791
10133099	WAINWRIGHT	0.00	0.00	0	0	0	0	0	0	0	0
10367099	WALES	0.00	0.00	0	0	0	1	0	0	0	0
12370099	WASILLA	57.03	0.00	0	0	0	2	0	82,125	0	82,125

DEPARTMENT OF COMMUNITY & REGIONAL AFFAIRS
 MISCELLANECUS INFORMATION REPORT

KEY	DCRA PLACE NAME	PUB ROAD MILES	ICE ROAD MILES	REG HOSP	LRGE HOSP	HOSP BEDS	HLTH FAC	H BED	F BED	Public Roads	ICE Roads	Totals
810368099	WHITE MOUNTAIN	2.75	0.00	0	0	0	1			5,316	0	5,316
812457099	WHITTIER	9.00	0.00	0	0	0	1			14,474	0	14,474
813295099	WRANGELL	9.03	0.00	0	1	0	2			11,563	0	11,563
812641099	YAKUTAT	7.34	0.00	0	0	0	1			10,966	0	10,966

6454135	922,150	737,225
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DEPARTMENT OF COMMUNITY & REGIONAL AFFAIRS
MISCELLANEOUS INFORMATION REPORT

	PUB ROAD MILES	ICE ROAD MILES	REG HOSP	LRGE HOSP	HOSP BEDS	HLTH FAC	H F BEDS	HOSP. CONST. AID
TOTALS	4,179.52	802.53	0	15	303	178	1,676	\$292,013

Public Roads : $\$6,454,135 \div 4,179.52 = \$1,544$ Average /m.le

Ice Roads : $\$922,150 \div 802.53 = \$1,149$ Average /m.le

ATTACHMENT B
19 AAC 30.052

30.042 or 19 AAC 30.043. The appeal must be in writing and must be postmarked within 15 days after the municipality received the written decision of the director. The appeal must include relevant evidence in support of the municipality's claim.

(b) No later than 15 days after receipt of the appeal, the commissioner will render a decision on the appeal. Immediately following the commissioner's decision, written notification, containing a statement of the decision and the reasons for it, will be sent to the municipality.

(c) The commissioner's decision on an appeal is final.

(d) After deciding all appeals made under this section for an entitlement year, the commissioner will certify a final municipal population report on or before December 15 of that entitlement year. (Eff. 10/18/87, Register 104)

Authority: AS 29.60.020
AS 29.60.070

19 AAC 30.050. APPEAL. Repealed 8/20/81.

19 AAC 30.051. STANDARDS FOR PAYMENT OF AID UNDER AS 29.89. Repealed 10/18/87.

19 AAC 30.052. STANDARDS FOR PAYMENTS OF STATE AID TO MUNICIPALITIES FOR ROADS. An applicant that is a municipality must meet the following standards to qualify for a payment for road maintenance under AS 29.60.110:

(1) the applicant must agree to spend, during the entitlement year in which the payment is received, at least 20 percent of the amount it receives under AS 29.60.110, including the cost-of-living differential allowed under AS 29.60.160, to provide the service for which the applicant seeks aid under AS 29.60.110, and must agree to spend the remaining amount for a public purpose for which the applicant has the power to spend public money;

(2) if the applicant seeks aid for the maintenance of a road that is connected to the state highway system, the applicant must demonstrate, to the satisfaction of the department, that the road is used by vehicles that are registered under AS 28.10;

(3) if the applicant seeks aid for the maintenance of a road for which the applicant has not previously received aid under AS 29.60.110, the applicant must submit to the department a map showing the beginning and end of the road and its route, and indicating the total length, average width, and surface composition of the road;

(4) if the applicant is a borough that provides road maintenance services by service area, the applicant must agree to allocate the amount the applicant receives under AS 29.60.110, including the

cost-of-living differential allowed under AS 29.60.160, for road maintenance within a service area, to that service area;

(5) the applicant must be providing the road maintenance for which it seeks aid under AS 29.60.110 as of October 1 of the computation year. (Eff. 10/18/87, Register 104; am 8/19/88, Register 107)

Authority: AS 29.60.110 AS 44.47.050
AS 29.60.160 AS 44.47.980

19 AAC 30.053. STANDARDS FOR PAYMENTS OF STATE AID TO MUNICIPALITIES AND OTHER ELIGIBLE RECIPIENTS FOR HEALTH FACILITIES AND HOSPITALS. (a) An applicant that is a municipality must meet the following standards to qualify for a payment for a hospital under AS 29.60.120:

(1) if the applicant operates the hospital for which the applicant seeks aid under AS 29.60.120, the applicant must have the power to provide hospital facilities and services;

(2) the applicant must agree to transfer, immediately upon receipt, the amount the applicant receives under AS 29.60.120 for a hospital, including the cost-of-living differential allowed under AS 29.60.160, to the hospital in the manner provided for in AS 29.60.120(a); and

(3) the hospital for which the applicant seeks aid under AS 29.60.120 must be providing treatment to patients as of October 1 of the computation year.

(b) An applicant that is a municipality must meet the following standards to qualify for a payment under AS 29.60.120 for a health facility:

(1) the applicant must have, and must be exercising, the power to provide health services as of October 1 of the computation year;

(2) the applicant must agree to spend, by the end of the entitlement year in which the payment is received, at least 20 percent of the amount the applicant receives under AS 29.60.120 for the health facility, including the cost-of-living differential allowed under AS 29.60.160, on health services or on the operation and maintenance of the health facility; and

(3) the applicant must certify that the money that the applicant receives under AS 29.60.120 for the health facility and that the applicant does not spend by the end of the entitlement year in accordance with (2) of this subsection, is dedicated irrevocably for health facilities and services. (Eff. 10/18/87, Register 104; am 8/19/88, Register 107)

Authority: AS 29.60.120 AS 44.47.050
AS 29.60.160 AS 44.47.980

MEMORANDUM

TO: Representative Mike Miller

FROM: Staff *J.S.*

RE: Percentage of RSA funds spent by the Fairbanks North Star Borough for administrative costs FY84 - 89

DATE: 2/8/89

The following is a list of the number of miles submitted by the Fairbanks North Star Borough under AS 29.60.110(a) for fiscal years 1984 - 89 and the the prorated dollars amounts that were generated. I used these figures to compute the dollar amount per mile the Borough recieved and then the percentage of funds expended for administrative purposes.

<u>Fiscal Year</u>	<u>Miles Submitted</u>	<u>Funds Generated</u>	<u>Dollars per mile</u>	<u>Percentage for Admin.**</u>
84	181.28	\$441,472	\$2435.30	21
85	224.15	\$599,534	\$2674.70	19
86	276.40	\$723,391	\$2617.19	19
87	296.70	\$592,270	\$1996.19	25
88	334.80	\$538,498	\$1608.42	31
89	334.8	\$540,290	\$1613.77	31

** Based on FNSB flat admin. fee of \$500/mile

FBKS. DAILY NEWS-MINER

2/6/89

EDITORIAL PAGE

Coming to a head

A bill in the Legislature could bring to a head the issue of inefficiency in the way our borough administrators local road services.

Rep. Mike Miller, R-North Pole, has submitted a bill to reduce to 10 percent the amount the borough can take from state grants to local road services areas to administer them. The borough uses about one-third of the grant money to administer the grants and says that even this is not enough to do an effective job.

Funding for the road service areas came to about \$1,500 a mile last year. Funds for about 350 miles of road were passed through our borough.

Borough officials say the chief reason for the high costs of administering the grants is the large number of service areas—95 of them ranging in size from 20 miles of road to one-quarter mile. Each has a commission of residents who receives funds and pays for snow removal and other services performed in their areas.

There's little doubt that road maintenance would become more cost effective with larger service areas and fewer of them. Anchorage, with only 15 road service areas, gets along fine with only 10 percent for administration. But any proposal to reduce the number of service areas would encounter serious political opposition. The local service areas are a popular form of government and are responsive to residents' needs.

Nonetheless, it is unconscionable that one-third of the money allocated for local road services is eaten up by administrative overhead. Our borough needs to take a hard look at the way it administers the grants and find a way to reduce its expenses.

Rep. Miller's bill would force our borough to act. Basic economies would have to be made in the way our borough administers the grants.

The end result would be a more efficient system for maintaining roads in our area. More money would be available for road services. This would be a worthy accomplishment and might be worth inviting the difficulties the bill would impose.

time in which to respond or to challenge the department's determination.

(b) The department shall make reasonable efforts to advise and assist municipalities in collecting information and completing reports necessary for the determination of entitlements under AS 29.60.010 — 29.60.080.

(c) The department shall, by regulation, classify for inclusion or exclusion as a component of a municipality's millage rate equivalent under AS 29.60.010 any tax revenue appropriated for a utility not included in the definition set out in AS 29.60.080(2). (§ 16 ch 74 SLA 1985)

Sec. 29.60.080. Definitions. In AS 29.60.010 — 29.60.080

- (1) "taxing unit" means a municipality and
 - (A) in a borough or unified municipality, a service area or the entire area outside cities;
 - (B) in a city, a differential tax zone;
- (2) "utility" means electric, water, sewer, gas, heat, telephone, or refuse and garbage collection service. (§ 16 ch 74 SLA 1985)

Article 2. State Aid for Miscellaneous Purposes.

Section	Section
100. Revenue sharing payable	140. State aid to unincorporated communities
110. State aid to municipalities for roads	150. Population determination
120. State aid to municipalities and other eligible recipients for health facilities and hospitals	160. Area cost-of-living differential
130. State aid to volunteer fire departments not in organized municipality	170. Miscellaneous services account
	180. Regulations

Sec. 29.60.100. Revenue sharing payable. In addition to the equalization entitlements paid under AS 29.60.010 — 29.60.080, during each fiscal year the department shall pay aid

(1) to a municipality or other eligible recipient that has the power to provide the services described in AS 29.60.110 — 29.60.130 and exercises the power in the manner required by AS 29.60.100 — 29.60.180;

(2) to an unincorporated community under AS 29.60.140. (§ 16 ch 74 SLA 1985)

Sec. 29.60.110. State aid to municipalities for roads. (a) The department shall pay to a municipality that has power to provide for road maintenance and exercises that power, \$2,500 a mile for each mile of road, street, or highway maintained by the municipality, excluding (1) the official state highway system, (2) roads, streets, or

highways not dedicated to public use, (3) roads, streets, or highways maintained under the local service road program (AS 19.30.111 — 19.30.251), and (4) alleyways, in accordance with regulations adopted by the Department of Transportation and Public Facilities. A payment may not be made under this subsection for maintenance of a road that is not used by automotive equipment.

(b) A frozen waterway and a connection from an inhabited area to a waterway that may be safely used for public transportation by automotive equipment and is so used during a portion of a year is eligible for payment of \$1,500 per mile if the waterway and connection are maintained during the period of use by a municipality or combination of municipalities. The department, after consultation with the Department of Transportation and Public Facilities, shall determine which waterways and connections qualify and, where the waterways or connections lie outside the corporate limits of a municipality, which municipalities shall receive the payments under this subsection, unless the municipalities involved have agreed in writing to a particular distribution. (§ 16 ch 74 SLA 1985)

Sec. 29.60.120. State aid to municipalities and other eligible recipients for health facilities and hospitals. (a) The department shall pay

(1) to a municipality that has the power to provide hospital facilities and services and that exercises that power, \$1,000 per bed for each bed actually used for patient care, limited to the number of beds provided for in the construction design of the hospital, or \$250,000 a hospital for those hospitals with 10 or more beds, or \$50,000 a hospital for those hospitals with less than 10 beds, as the municipality may elect; money received under this paragraph may be used only for hospitals and shall be apportioned among qualifying hospitals as the municipality determines;

(2) on the basis set out in (1) of this subsection to a municipality for a nonprofit hospital not operated by a municipality if the municipality first certifies to the department that the nonprofit hospital is in compliance with all standards for hospitals that have been adopted by the municipality; money may not be paid on behalf of a nonprofit hospital without this certification; payments to the municipality shall be transferred to the nonprofit hospital in accordance with the basis by which the payment was generated by the hospital, and shall be applied to the annual cost of operation and maintenance of the hospital or for the provision of health care service at the hospital as the directors of the hospital determine;

(3) to a municipality in which a health facility is operated, \$2,000 per bed for each bed actually used for patient care, limited to the number of beds provided for in the construction design of the health facility, or \$8,000 per health facility as the municipality determines.

6-0136E.

Cook
2/8/89

Original sponsor: Miller

1 IN THE HOUSE

2 CS FOR HOUSE BILL NO. 39 ()

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to state aid to municipalities for
7 roads; and providing for an effective date."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 * Section 1. AS 29.60.110(a) is amended to read:

10 (a) The department shall pay to a municipality that has power to
11 provide for road maintenance and exercises that power, \$2,500 a mile
12 for each mile of road, street, or highway maintained by the municipal-
13 ity, excluding (1) the official state highway system, (2) roads,
14 streets, or highways not dedicated to public use, (3) roads, streets,
15 or highways maintained under the local service road program (AS 19.-
16 30.111 - 19.30.251), and (4) alleyways, in accordance with regulations
17 adopted by the Department of Transportation and Public Facilities. A
18 payment may not be made under this subsection for maintenance of a
19 road that is not used by automotive equipment. Money received by a
20 municipality under this section may be used only for construction or
21 maintenance of roads. No more than 10 percent of the money received
22 may be used for administrative costs incurred in connection with the
23 construction or maintenance, including costs of bidding, contracting,
24 and project oversight.

25 * Sec. 2. This Act takes effect July 1, 1989.

8:30

HB 018 - Enter to recap c/s 54
Ben 24 more c/s for HD 54 TRUSA be made

66 ^{etc} Enter
More

more 68 more c/s 54 act ID/Rec.

74 - HB 39 -

cont 88 enter notes to adopt

Learn 91 moved to adopt c/s HB 39

93 SO ordered

96 Rep Mike Miller briefly described HB 39 to the H.T.C.
Rep Miller expressed the needs of his district for Road improvement
in his District 18 ~~North Star~~ Fairbanks North Star Borough.
500 per mile for Adm. Fees. Budget cuts. and the Adm Fee being
constant. less very little ~~only~~

* 143

Limit Borough to assume the
10% of the money received
in this section for
Adm fees not for
balance will be use for
maintenance and construction of
roads

180 Hubs
Miller 183

What kind of Roads
Subdivision Roads on mil tax (Settland)

203 Hubs - Limit on Amount of Adm Fees that can
be deducted (now taking 30% ^{no more than} 10% ok)

219 - Huber

227 Learn - Do we need to def... other cost.

Miller 230

Dept

257 Jim Puzan - Community of Regional Aff

260 Colot -

263# Jim Clarified through Regulation

* 276 Colo

* 282 Gressy.

~~289~~ Jim 289* - Reallocate through ^{Budget For FY90} Supplemental Budget.

300 Ben - Ice Roads Concept?

304 ~~Jim~~ - Frozen utility when frozen Cleared and used for Roads (\$1500 per mile ^{compared to} (2500 mile per hour)

Used for all purpose.

320 Ben How many miles of Ice Roads in operation
325 ~~Jim~~ 802 mile

332 Hulse - What requirements are there to finance ^{new} ~~new~~ to small community requesting roads

* 341 Jim Annual appropriate requests on how mile funded by DOT.

377 Hel, Do the Feds transfer in one lump sum
379 Jim prepared in fall - final prepared in Spring

* 385 Colo

391 Jim

403 Hel. Does this legislation *

406 Jim you it does, under existing standards

416 Colo what does community do with 80% if they agree use 20%

Jim 423

Following years

430 Cols.

444

same extra notes to now C/S
out with Ind. Rec.

448

Hd

now C/S with Ind. Rec.

450

cols. di. /

9'00
—

454

HB

53

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

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Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS database CMPR. In order to save space copies of minutes have not been left in the files.

Mary Van Nimwegen

HB 53

House Transportation

1/17/89

House Trans

1/19/89

House Trans

1/24/89

Date Referred: January 9, 1989

FURTHER REFERRALS: JUDICIARY / FINANCE

Date of Committee Action: 01/24/89

HB 53

The TRANSPORTATION Committee recommends that:

HOUSE BILL NO. 53 [DRIVERS LICENSE/DRIVING OFFENSES]

"An Act relating to the privilege to drive, driver licensing, driving while intoxicated, and other procedures and matters related to driving and the revocation of driving privileges; relating to operating an aircraft or watercraft; and providing for an effective date."

[✓] be replaced with c/s HB 53 (Transportation) [✓] the same title [] a new title [] have attached amendment(s)

- [✓] do pass
- [] do not pass
- [] no recommendation
- [] individual recommendations
- [] additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):

APPROVES PREVIOUS:

- [✓] fiscal impact corrected
- [✓] zero fiscal note Pub. Safety
- [] zero with analysis

- [] fiscal note(s) published:
- [] zero fiscal notes(s) published:

SIGNING DO PASS:

SIGNING OTHER THAN DO PASS:
(Do Not Pass, No Recommendation, Amend)

Ben Grussendorf GRUSSENDORF
Richard Foster FOSTER
Bette Cato CATO

Bill Hudson - NO REC. HUDSON
Norm A. Lemman - NO REC. LEMMAN

Bette Cato
 Chairman's signature

Alaska State Legislature

House of Representatives



Committee on Transportation
JANUARY 24, 1989

Pouch V
State Capitol
Juneau, Alaska 99811
(907) 465-4858

Rep. Bette Cato, Chairman

COMMITTEE CALENDAR:

HB 53: "An Act relating to the privilege to drive, driver licensing, driving while intoxicated, and other procedures and matters related to driving and the revocation of driving privileges; relating to operating an aircraft or watercraft; and providing for an effective date."

HB 11: "An act relating to motor vehicle license plates for veterans."

FOR THIS MEETING, YOU HAVE BEEN GIVEN:

Folder 1

- Item #1: HB 53
- #2: Fiscal Note:Public Safety
- #3: Fiscal note:Corrections
- #4: Statutes
- #5: Sectional Analysis
- #6: Comparison sheet
- #7: Summary sheet-Sixth DWI Conviction
- #8: Journal Articles
- ** #9: Sectional Analysis of C/S HB 53
- ** #10: Work draft C/S HB 53
- ** #11: Fiscal note from Dept. of Corrections
- ** #12: Analysis from Department of Corrections
- ** #13: Fiscal note from Dept. of Public Safety

Folder 2

- Item #1: HB 11
- #2: Fiscal Note:Public Safety
- #3: Position Paper:Public Safety
- #4: Statutes
- #5: Sample of Plates
- #6: Letters of Support
- ** #7: Sectional analysis C/S HB 11
- ** #8: Work draft C/S HB 11
- ** #9: Fiscal note and position paper

Alaska State Legislature

JAN 11 1989

Committees:

Chair State Affairs
V. Chair Judiciary
Telecommunications
Special Ethics
Legislative Council
Finance Subcommittee
for the University of Alaska
Joint Committee
on Economic Recovery



P.O. Box V
Juneau, Alaska 99801
(907) 465-4947

REPRESENTATIVE FRAN ULMER

MEMORANDUM

TO: Rep. Bette Cato, Chairman
House Transportation Committee

FROM: Rep. Fran Ulmer

DATE: January 9, 1988

RE: HB 53

I would like to request that HB 53, relating to the privilege to drive and driving while intoxicated, be scheduled in House Transportation as soon as possible. As you know, this is a very complex and time consuming issue and since this legislation has three committee referrals, I would like to get it started going through the legislative process early this session.

Thank you for your consideration

MANDATORY MINIMUM

COMPARISON OF PROPOSED PENALTIES FOR DWI OFFENDERS

	<u>Current law</u>	<u>HB 53</u>	<u>HB 26</u>	<u>HB 2</u>
1st DWI	3 days in jail 90 day loss/license \$250 fine <i>Earn back last 60</i>	3 days in jail 90 day loss/license Earn back last 60* (2) \$250 fine		ILS court option
2nd DWI	20 days in jail 1 year loss/license \$500 fine	20 days in jail 1 year loss license Earn back last 60 days* (2) \$500 fine		ILS court option
3rd DWI	30 days in jail 10 yr loss/license \$1000 fine <i>① discretionary fut.</i>	60 days in jail 10 yr loss/license Earn back last 5 years* (2) \$1000 fine <i>①</i>	<i>mandatory</i> forfeiture of vehicle	ILS court option
4th	30 days in jail 10 yr loss/license \$1000 fine <i>①*</i>	120 days in jail 10 yr loss license \$2000 fine Earn back last 5 years <i>①</i>	↓	ILS court option
5th	30 days in jail 10 yr loss/license \$1000 fine <i>①*</i>	240 days in jail 10 yr loss license \$3000 fine Earn back last 5 years <i>①*</i>		ILS court option
6th DWI	30 days in jail 10 yr loss/license \$1000 fine <i>①*</i>	Class C felony		ILS court option

② for limited license
 not considered
 - ILS
 - ambulance
 - random urine tests

AMENDMENT #1

Offered in the HOUSE
by Grussendorf

TO: HB 53

Page 10, line 9:

After the word "has" insert the word not .

Page 10, line 10:

Delete the word "once" and insert the word twice .

AMENDMENT #2

Offered in the HOUSE
by Grussendorf

TO: HB 53

Page 14, lines 13 and 14:

Delete all material.

Page 15, line 7:

Delete the word "five" and insert the word four .